United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

74-2328 et al.

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket Nos. 74-2328 et al.

UNITED STATES OF AMERICA,

Appellee,

—v.—

HARRY BERNSTEIN, et al.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANTS' APPENDIX

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UNITED STATES COURT OF APPEALS
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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- :

HARRY BERNSTEIN, ROSE BERNSTEIN, EASTERN SERVICE CORPORATION, HERBERT CRONIN, FLORENCE BEHAR, DUN & BRADSTREET, ARTHUR PRESCOTT, MELVIN CARDONA, JOSEPH JANKOWITZ, : 72-CR-587

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

June 17, 1974
10:25 o'clock a.m.

B e f o r e:

HONORABLE ANTHONY J. TRAVIA, U.S.D.J.

and a Jury.

GENE RUDOLPH
OFFICIAL COURT REPORTER

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(continued next page)

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GR/dl
1/lam

(The following occurred in the presance of the jury.)

THE COURT: Good morning.

I see you are double casted?

MR. MC EVOY: Yes, your Honor.

THE COURT: Now what? Not squash, that's for sure.

MR. MC EVOY: No. I fell, and to protect my leg I put my hand out and broke my wrist.

MR. SOVIERO: Usual Irish problem, if it please the Court; he was drunk.

THE COURT: I'll let Mr. McEvoy debate that one for himself. I am sorry to hear it.

MR. MC EVOY: Thank you.

THE COURT: All right, ladies and gentlemen of the jury, and ladies and gentlemen at the counsel table.

On Friday when we were adjourned for the day, which was around 4:10 in the afternoon, I was in the process of discussing the five defendant's part of the case; namely, Harry Bernstein, Rose Bernstein, Eastern Service Corporation, Florence Behar and Melvin Cardona; and I started off at that time by discussing the false statement counts, those charged under Section 1010 of the law, against four of those five, namely, Harry Bernstein, Eastern Service

Corporation, Florence Behar and Melvin Cardona.

At that time, if you recall, I also told you that I would discuss the bribery counts against those charged with that after we got through with the false statement counts, but we stopped at the point where I had discussed the false statement charges and was about to discuss the Section 2 violation charges against those same four, and we adjourned at that time.

Before going on, I would like to remind you that during the part of my charge where I discussed the defendants Dun & Bradstreet and Arthur Prescott, you will recall that I talked to you about the false statement statements that were contained in the factual data reports or the credit reports, as we have called them, concerning 20 different reports, and during the discussion I read to you the false statement as alleged in each of those reports, and I pointed to the fact that I had them circled so that there would be no question about the parts that are alleged to be the false statements.

During that recitation, I did not read the remarks sections of those particular factual data reports, but I did tell you that you are to take the entire factual data report as a whole and that they will be before you and you will have the opportunity

to read not only the circled parts zeroing in on the false statement allegations, the allegations of the Government, that they are false statements, and I would ask you at that time to please consider the whole report and consider it as a whole and read the remarks section with it, so that I did not read the remarks section, so that I would not be taking up too much time, since you will have them and you will be able to read them yourselves.

I also told you that I would send in to you, with the other papers that I would send in to you, such as the memorandum of jury verdict and those lists, I would also send into you as a package, those 20 factual data reports that I read to you -- 10, I'm sorry, not 20, 10 factual data reports, as they were photocopies of the actual data report that is in the files contained in those FHA files that are in evidence. So that you will have them before you, and, of course, you will have the files before you, and you can take into consideration the entire file, including the factual data report.

Then, when I discussed the false statement charges against the four defendants that I am now discussing, I then read to you from the 2900 forms, the 28 2900 forms that Mr. Bashian referred to in his

summation.

MR. BASHIAN: Eighteen, your Honor. Eighteen.

MR. BRODSKY: Eighteen.

THE COURT: Eighteen. I got my numbers mixed this morning, but it's eighteen.

MR. BRODSKY: Eighteen.

THE COURT: And I told you at that time that 10 of those 18 were the 10 -- were in the same files that the 10 factual data reports that I had talked to you under the D&B and Arthur Prescott part of the charge, so that there was a total of 18 2900 reports where I did the same thing, and I circled the actual false statements that are alleged to be false and I indicated to you at that time that those 2900 forms are in evidence and are parts of the FHA files as are in evidence and that I would exhort you to not only rely on the circled parts that I circled in those forms, but refer you to the entire file that's in evidence, so that you will have not only the file, the parts that were circled, which are those statements which the Government alleges are false, and you will have with you all -- not only the files that are in evidence, but also having heard all the testimony -- keep that in mind -- the testimony of all the witnesses that you have heard concerning those files and those

particular reports.

There, too, I will send in to you the 18 2900 forms that Mr. Bashian spoke about during his summation, so that you will have the package of the 2900 forms concerning 18 cases and the 10 factual data reports that were discussed by Mr. Obermaier together with you, so that you will know exactly what I was referring to and you will have before you, with the reminder to you that all of my charge concerning those particular forms are to be taken into consideration at the time you consider them.

Now, the -- we will get to the point now where I left off Friday, where I was about to discuss the Section 2 violations as to the four defendants.

These four defendants that I have been discussing are Harry Bernstein, Eastern Service Corporation, Florence Behar and Melvin Cardona.

They are also charged in each of the said 18 counts with other defendants named, in each of those counts, with a violation of Title 18 of the United States Code, Section 2, which I have read to you before, but which I will read again, so that we will have it in mind as we proceed.

Section 2 is entitled "Principles," and Subdivision A of Section 2, which is the Subdivision with which we will be concerned in these counts, reads

as follows: "A, whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principle."

Now, where two or more persons are charged with the commission of a crime -- as I have told you this before but I shall repeat it -- the guilt of any defendant may be established without proof that he personally did every act constituting the crime charged.

The section I just read provides that a person who aids and abets another to commit an offense is also guilty of the offense, and as I said in discussing this Section 2 previously, and it is applicable here, in order to aid and abet another to commit a crime, it is necessary that the accused knowingly and wilfully associate himself in some way with the criminal venture, and wilfully participate in it as he would in something he wishes to bring about. That is to say, that he wilfully seeks by act or omission of his to make the criminal venture succeed.

Participation is knowingly done and wilfully done if done voluntarily and intentionally, and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done.

(continued next page.)

THE COURT: (continuing) Now, you may not find a defendant guilty unless you find beyond a reasonable doubt that every element of the offense as previously defined in these instructions was committed by some person or persons, that the defendant participated in its commission and that the defendant had the requisite knowledge of the false statements and intent to influence as defined earlier in these instructions.

When I talk about the "elements of the offense," I am talking about the essential elements that I described to you that are necessary for the Government to prove beyond a reasonable doubt as to each offense.

Now, you should apply these principles to this case.

As to these counts which involve statements in a credit application and the attached exhibits, the defendants, Eastern Service and Florence Behar, are charged with the offense of making, passing, uttering or publishing a false statement, in violation of Section 1010 of Title 18 of the United States Code.

The defendants Harry Bernstein and Melvin Cardona in the counts in which they are charged are alleged to have aided and abetted the commission of the offense.

Therefore, you should first determine whether or not the defendants Eastern Service and/or Florence Behar committed the offense. If you find that neither Eastern Service Corporation or Florence Behar committed the crime charged, you must acquit the defendants Harry Bernstein and Melvin Cardona in this Section Two charge.

If you find that either the Eastern Service Corporation or Florence Behar or both committed the offense, then you should consider whether the defendants Harry Bernstein and Melvin Cardona aided and abetted the commission of the crime, with the requisite knowledge and intent.

You heard me mention a number of times certain words which I have defined and which are necessary of definition again and while I may sound repetitious, it is necessary.

The word "knowingly" first. "Knowingly" means that the act was done voluntarily and purposely and not because of mistake or accident or other innocent reason.

Knowledge may be proven by the defendant's conduct and by all the facts and circumstances surrounding the case.

The purpose of adding the word "knowingly" was to insure that no one would be convicted for an act done because of mistake or accident or other innocent reason.

As stated before, with respect to such an offense as charged in this case, specific intent must be proved before there can be a conviction.

Intent is a necessary ingredient of the offense. Whether such intent existed is a question of fact which you, as jurors, must exclusively find from the facts and all the surrounding circumstances.

If you find that the defendant or defendants acted by mistake, inadvertent or other innocent reason, then he can not be charged with knowingly committing the offense.

I also used the words "specific intent". The crime charged in this case again requires proof of specific intent before the defendant can be convicted. I have defined that term several times and it applies with equal force in this matter that I am now discussing.

You, as jurors, or as the Jury, will bear in mind that the law never imposes upon a defendant in a criminal case the burden of calling, or the duty, of

calling any witnesses or producing any evidence. The burden is always upon the prosecution, to prove beyond a reasonable doubt each and every essential element of the crime charged.

I told you a few minutes ago that I would then, after discussing the Section Two charges, after having discussed the Section 1010 charges, that I would then go into the bribery counts. I told you then that I would return to the bribery counts as soon as we completed that phase of the case.

Now, the defendant Harry Bernstein, with other defendants named, is charged with 19 separate violations of Sections 201 (b) 1 and Section 2. They are Counts 29, 33, 35, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 61, 63 and 65.

The defendant Rose Bernstein, also known as Rose Shorenstein, with other defendants named, is charged with seven separate violations of Sections 201 (b) 1 and 2. They are Counts 29, 33, 35, 36, 37, 38 and 62.

The defendant Eastern Service Corporation, with other defendants named, is charged with 21 separate violations of Sections 201 (b) 1 and 2. They are Counts 29, 33, 35, 36, 37, 38, 39, 41, 42, 44, 46, 48,

50, 51, 53, 55, 57, 59, 61, 63 and 65.

The defendant Florence Behar, with other defendants named, is charged with four separate violations of Sections 201 (b) 1 and 2, and they are Counts 33, 35, 37 and 38.

That sounds like we have a total of 51. Of course, that is not so. We actually have 22 different counts, wherein these four defendants are named, in 19 of which the defendant Harry Bernstein is named, for the purpose of this trial; in seven of which Mrs. Bernstein is named; in 21 of which the Eastern Service Corporation is named; and in four of which Mrs. Behar is named.

Here again you do not have to remember all those numbers because the memorandum of verdict which I will be giving you will be of help. I shall list the name under each of these 22 counts, I shall list the names of the defendants under each of those counts, that you will be concerned with as to the guilt or innocence in each of those counts.

You will recall, too, I will be giving you that list which will give the name of the defendant with the particular counts under each section, so that you will have that cross-reference and index, which I referred

to you and you can refer to the numbers. They are there.

Now, I shall not set forth the dats alleged in each of these 22 counts, the defendants involved and the property locations.

You will have the indictment before you and you will have the 22 counts separately stated before you, which I have already enumerated.

Suffice it to say, at this time, in my charge, that the individual alleged to have been bribed is Joseph Jankowitz in two of those counts and Edward Goodwin in 20, and that in six of the 22 the amount of the bribe was approximately $100 and that in 16 the amount of the bribe was approximately $50, and that six of the counts are differently worded than the remaining 16. So I shall read one of each, so that you will know what I mean.

Of course, as I indicated, you will have each of these counts before you and you can read them separately.

(continued on next page)

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Charge of the Court

THE COURT: (Continuing) Now, the two that I say read a little differently are Counts -- in six of them, Count 29 is one and then in the others, Count 30, I believe, is the other, and you will understand what I mean when I read them both, I will tell you something about them.

Count 29 read as follows:

"On or about the 31st day of October, 1968, within the Eastern District of New York, the defendant Ortrud Kapraki aided and abetted by the defendants Rose Bernatein, also known as Rose Shorenstein, Harry Bernstein, and Eastern Service Corporation, corruptly and directly paid approximately $100 to one Joseph Jankowitz, who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing & Urban Development, an agency of the United States, with the intent to influence official acts of the said appraiser, in connection with a property appraisal located at 260 51st Street, Brooklyn, New York."

That charge is brought under Title 18, U. S. Code, Section 201(b)(1) and Section 2.

Now, the six counts, to repeat, that are identically worded with the exception I have indicated

above or earlier are 29, the one I just read, 33, 35, 36, 37 and 38.

I shall now read one of the remaining 16 counts and then I will tell you something about both. I will take the first of the remaining 16 counts and read it as follows, which you can read yourself when you see the indictment.

Count 29:

"In or about October, 1967, within the Eastern District of New York, the defendant Harry Bernstein and Eastern Service Corporation corruptly and directly paid approximately $50 to one Edward Goodwin, who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing & Urban Development, an agency of the United States, with the intent to influence official acts of the said appraiser in connection with a property appraisal and refinancing at 190 Adelphi Street, Brooklyn, New York."

And that charge too is brought under Title 18 of the United States Code, Section 201 (b) (1) and Section 2.

The 16 counts, again to repeat, that are identically worded, with the exceptions I have noted

above, namely, the date and the address and the named defendants, are 39, 41, 42, 44, 46, 48,50, 51, 53, 55, 57, 59, 61, 62 and 65.

You will have noted, I am sure, as I read these two particular counts, that in the first count, Count 29, of which I told you there are six the same, in that count it is alleged that the defendant Ortrud Kapraki aided and abetted by certain defendants corruptly and directly paid to an individual.

In the other count that I read, Count 39, it is alleged that the defendants Harry Bernstein and Eastern Service corruptly and directly paid to someone.

Title 18 of U. S. Code -- I have here U.S.S. That is U. S. Steamship -- of the U. S. Code, Section 201 (b)(1), states, in part, pertinent to this case and the 22 substantive counts that I just referred to, and the four particular defendants I have mentioned, is as follows, and you will recall earlier I read Section 201 in practically its entirety, but I told you that when I got to discussing particular parts of the case, I would read at least the part that is pertinent to the counts that I am discussing and I am doing that now.

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Charge of the Court

201, which I told you is titled Bribery of Public Offices and Witnesses, 201(b) read as follows:

"Whoever directly or indirectly corruptly gives, offers or promises anything of value to any public official with the intent, one, to influence any official actor shall be guilty of an offense against the laws of the United States."

(Continued on next page.)

THE COURT: Now, you will recall, too, that when I read the entire Section 201 to you, I did not read that part of 201 which defined certain persons, because I told you at that time I will have so do that when I discuss each count.

The same Section 201 in other parts which were the definition parts defines certain terms as follows:

"A. For the purpose of this section, public official means an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, in any official function under or by authority of any such department, agency or branch of Government, and " -- then it goes on and says:

"An official act means any decision or action on any question, matter, cause , suit, proceeding or controversy which may at any time be pending or which may by law be brought before any public official in his official capacity or in his place of trust or profit."

Now, the essential elements required to be proved in each count, of course, and as to each defendant separately, each essential element of which the Government must prove beyond a reasonable doubt, inorder

to establish the offense charged in the indictment and particularly the 2200 counts we are talking about, are, first, the act or acts of directly or indirectly offering or promising or giving to a public official a sum of money or think of value as is charged in the indictment. And in the counts that I read to you.

Second, doing such act or acts willfully and corruptly.

And third, doing such act or acts with the specific intent to influence some official act of said public official as is charged in those particular counts.

As stated before, the burden is always upon the prosecution, to prove beyond a reasonable doubt every essential element of the crime charged. And that law never imposes upon a defendant in a criminal case the burden or the duty of calling any witness or producing any evidence.

Now, in this case the defendants Harry Bernstein, Rose Bernstein, and Eastern Service Corporation are charged directly with bribing or I should say, are charged with directly bribing Edward Goodwin, and the defendants Harry Bernstein, Rose Bernstein, Florence Behar and Eastern Service

are further charged with aiding and abetting and counselling Ortrud Kapraki in the payment of bribes to Edward Goodwin and the defendant Joseph Jankowitz.

In order to find any of the defendants guilty of any specific charge inthe indictment, the Government must prove each of the three essential elements I described to you and do so beyond a reasonable doubt.

Now, let me take up the essential elements in the order that I gave them to you:

As to the first essential element, which I told you was the act or acts of directly or indirectly offering or promising or giving to a public official a sum of money or a thing of value as charged in the indictment, if you find that Edward Goodwin and the defendant Joseph Jankowitz were at the times in question public officials employed by the Federal Housing Administration of the Department of Housing and Urban Development, and that they performed appraisals as part of their official duties, you may find that actions taken with respect to those appraisals are official acts.

If you so find, you are not bound to do so -- after considering all the evidence in this -- in that regard in reaching a decision, then you should determine

whether or not anything of value, namely money, was paid by Harry Bernstein, Rose Bernstein, Eastern Service and/or Ortrud Kapraki, to either Mr. Goodwin or Mr. Jankowitz.

If you so find, you should next consider whether or not the payment of that money was done willfully and corruptly, which is the second essential element that I told you about, doing such act or acts willfully or corruptly.

Now, at this moment, I think before going into other parts of the elements, I want to again define the word, "willfully."

The word willfully as used in the crime charged means that the act or omission was committed or omitted by the defendant voluntarily, with knowledge that it was prohibited by law, and with the purpose of violating the law and not by mistake, accident or good faith.

The other word which is part of the second element which I told you doing such act or acts willfully and corruptly, the other word, therefore, is "corruptly" to act.

And act is corruptly done if done voluntarily and intentionally and with the bad purpose of

accomplishing either an unlawful end or result, or result by some unlawful method or means.

(continued next page.)

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So a person acts corruptly whenever he makes a wilful attempt to persuade or influence the official action of a public official by an offer of money or anything of value.

The motive to act corruptly is ordinarily a hope or expectationof either financial gain or b· efit to one's self or some aid or profit or benefit to another.

Now, then we come to essential number three, essential number three, if you recall, and I trust you will remember these very specifically, doing such act or acts with the specific intent to influence some official act of the said public official as charged in each of those counts. If you find that money was corruptly paid to Mr. Goodwin, and to the defendant Joseph Jenkowitz, in his capacity as an FHA appriaser, then in order to find a defendant guilty of an offense under Section 201 (b)(1), you must further find beyond a reasonable doubt, that the money waspaid with the specific intent to influence the official acts of that appraiser.

Now, to act with an intent to influence means to act with the specific intent to effect

or have an effect on the conduct or actions of another. In considering this element, you are called upon to determine what was in the defendant's mind and the purpose which motivated him in his conduct. Direct proof is rarely available to establish intent. Like any other fact, it may be proved by circumstantial evidence and by the statements and the actions of the person involved.

In considering the intent to influence element of the offense you must consider the evidence with relationship to each count independently. However, you may consider evidence of additional payments as bearing on the intent or motivation of the giver of the money in a particular instance.

Now, although the Government must prove beyond a reasonable doubt that any payment was made with the specific intent to influence the official action of the FHA appraisers, Mr. Goodwin and Mr. Jenkowitz with respect to matters then before either of them or would come before them, or either of them, it's not an element of the crime that the Government need not prove in any way that the official to whom a bribe was paid was in fact corrupted or changed or altered in any way, or

performed any service or favor in return for the money. In this phase of the case, that of bribe-giving on the question of intent to influence the Government need only prove that something of value was given for the purpose of and with the intent of influencing an official act. It makes no difference whether the acts intended to be influenced were in fact influenced, or that the object of the bribe could not be obtained or was not obtained, or that if the act were done, it turned out that there had been actually no need or occasion to seek to influence any official conduct.

It is the corrupt giving of money with intent to influence an official act that constitutes an offense. Thus in this case, if you find that the money was corruply paid to an appraiser with the intent to influence an official act, you need not find that the appraiser did anything wrong or was in any way influenced by the payment in order to find the giver guilty.

Similarly, whether the payment in connection with an appraisal is made before or after the act of an appraisal is not decisive. An intent to

influence may be found where payment is made after the official act has been performed, if you find that there is an arrangement or an understanding as to the method of payment.

Now, you have heard testimony that Mr. Goodwin received payments of money from Harry Bernstein, and/or Rose Bernstein, after having performed official acts in connection with appraisals to particular properties. You have also heard testimony that after the payments by Harry Bernstein or Rose Bernstein he was again assigned the same appraisal in an official capacity and that he took further action with respect to the case. If you believe this testimony you may consider the fact that Mr. Goodwin had a continuing responsibility with respect to that appraisal after its initial completion as relevant on the question of the defendant's intent to influence any official action of Mr. Goodwin at the time of the payment.

If, of course, you don't believe that Mr. Goodwin was paid by Harry Bernstein or Rose BErnstein with respect to a particular property with the requisite intent of influence which I have described to you, then you must acquit the defendants

of violation Section 201 (b)(1).

Now, it is no defense that the offer or promise of money or thing of value was made to the public official with the intent to influence an official act which is lawful or even desirable to the public welfare. The purpose of the statute is to protect the integrity of official acts of public officials against the insult and possible temptation of any willful offer or promise or anything of value when corruptly made, directly or indirectly with intent to influence any official act, good or bad, desirable or undesirable.

Now, each of these four defendants are also charged with others named with a violation of Title 18 of the United States Code, Section 2. Again, I am going to repeat Section 2, the part at least that is pertinent to this part of my charge.

Section 2 states as follows: A, whoever commits an offense against the United STates or aids, abets, counsels, demands, induces or procures its commission is punishable as a principle.

I must repeat again, in order to aid and abet another to commit a crime, it is

necessary that the accused knowingly and willfully associated himself in some way with the criminal venture and willfully participated in it as he would in something he wishes to bring about, that is to say that he willfully seeks by act or omission of his to make the criminal venture succeed. Participation is knowingly done and willful if done voluntarily and intentionally, and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done. The guilt of a defendant may be established without proof that the accused personally did every act constituting the offenses charged.

The defendants Harry Bernstein, Rose Bernstein, Florence Behar and Eastern Service Corporation are also charged in this part of my charge which is the Section 2 charge, with aiding and abetting and counselling the payment of bribes to Edward Goodwin and the defendant Joseph Jenkowitz and the Government claims this was done by counselling payment of moneys to these men and by arranging to have them assigned to Mrs. Kapraki's cases. I have previously instructed you with regard to

the principles of aiding, abetting and counselling false statements if you recall. The principles involves with respect to aiding and abetting and counselling are the same in this context. In order to find any defendant guilty under Section 2, you must first find that the person who is alleged to have been aided and abetted did, in fact, commit a crime. Therefore, in this case you must first determine whether or not Ortrud Kapraki either paid money to Edwin Goodwin or Joseph Jenkowitz as the case may be, corruptly, with the intent to influence either or both of them in any official act under Section 201 (b)(1), or that Ortrud Kapraki paid money to Edwin Goodwin or Joseph Jenkowitz, as the case may be, for or because of an official act performed or to be performed by either Mr. Goodwin or Mr. Jenkowitz in any particular counts, and that either of such payments was a crime.

If you find in any particular count that a payment constituting a crime was not made, then you must acquit all those who are accused of aiding and abetting in that count. If you find that a crime was committed by Ortrud Kapraki, then

with respect to each particular count, the defendant who is alleged to have aided and abetted Mrs. Kapraki, you must find beyond a reasonable doubt that the defendant in some way associated himself or herself with the bribe and its purposes, that he participated in the association he wished to bring about, and that he sought by his action to make the bribe payment succeed.

In other words, you must find that Mrs. Kapraki had a corrupt intent and that the defendants shared that corrupt intent and acted in a manner to assist her in achieving her goal.

Now, you heard me again mention certain words which I should define and I may be repetitious but I am going to keep repeating it because we are now getting down to the end of my charge, and I have told you earlier that I would want to repeat these definitions so that you would be reminded of them as I went along.

The first is knowingly. Knowingly means that the act was done voluntarily and purposely, and not because of mistake or accidentally or other innocent reason. Knowledge may be proven by the defendant's conduct and by all the facts and

circumstances surrounding the case. The purpose of adding the word knowingly was to insure that no one would be convicted for an act done because of mistake or accident or other innocent reason.

As stated before, with respect to such an offense, such as charged in this case, specific intent must be proved before there can be a conviction. Intent is a necessary ingredient of the offense and whether such intent existed is a question which you, the Jury, must exclusively find from the facts and all the circumstances surrounding the case.

If you find that the defendant or defendants acted by mistake, inadvertence or other innocent reason, then he could not be charged with knowingly committing the crime. I also used the words specific intent and here you recall on some occasions I defined it again and then I said I would not repeat it, but I will repeat it in its full context now.

I used the words specific intent. The crime charged in this case requires proof of specific intent before the defendant or defendants may be convicted. Specific intent as the term

implies, means more than the general intent to commit the act. To establish specific intent the Government must prove that the defendant knowingly did an act which the law forbids or knowingly failed to do an act which the law required, purposely intending to violate the law, and from other similar or prior acts or transactions.

Now, such intent may be proved by circumstantial evidence, direct evidence, or a combination of both circumstantial and direct evidence. I described and defined these terms to you early in my charge and what standard to apply. As I said to you then, earlier in my charge, direct evidence is such evidence as given by an eye-witness, by the exhibits in evidence and by whatever stipulations have been entered into in your presence. Circumstantial evidence is the proof of a chain of circumstances pointing to the commission of the offense.

(Continued on the next page.)

Charge of the Court

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To repeat what I said earlier, the law makes no difference or no distinction between direct and circumstantial evidence, but simply requires that before convicting a defendant that the jury should be satisfied of the defendant's guilt beyond a reasonable doubt from all of the evidence in the case.

Now, while witnesses may see and hear and so be able to give direct evidence of what a defendant does or fails to do there can of course can be no eyewitness account of the state of mind with which the acts were done or omitted.

What a defendant does or fails to do may indicate intent or lack of intent to commit the offense charged. In determining the issues as to intent, you, the jury, is entitled to consider any statements made or acts done or omitted by the accused and all the facts and circumstances in evidence in the case which may aid you in your determination of his state of mind, including any similar or prior acts or transactions, if any have been established by the evidence in this case.

Now, remember again that as I have indicated to you so many times, the burden is upon the

Government to prove each essential element beyond a reasonsable doubt and the burden never shifts to a defendant. The defendant is not obliged and not obligated in any way to produce any witnesses or any evidence in the case.

Now, getting on to another phase, if you recall, when I read Section 201, which is the section that I have been discussing up to now, 201B1 of it anyway, because Section 201, which is the section under which the defendants Harry Bernstein, Rose Bernstein and Florence Behar and Eastern Service Corporation are charged with bribery, you will recall I told you that section also provides in another subdivision which is known as the 201F, and I am going to read that 201F to you as I told you I would, and if you recall at that time I said I would de cribe as being the lesser included charge.

201F reads as follows: Whoever otherwise than as provided by law for the proper discharge of official duty directly or indirectly gives anything of value to any public official or because of any official act performed, or to be performed by such public official incur -- etc., etc., the penalties provided by the law.

Charge of the Court

This subdivision is what I called and what I referred to as the lesser included offense which you may or may not find applicable in this case.

Now, there are two essential elements that the Government must prove beyond a reasonable doubt in order to establish a violation of Title 18 of U.S. Code Section 201F which is this subdivision. First, a payment of anything of value to a public official otherwise than as provided by law for the proper discharge of his official duties; second, that the payment of anything of value to a public official before or because of any act performed or to be performed by the public official.

Now, in order to find a violation of Title 18 of the U.S. Code Section 201F you need not find that a payment of money was made with any intent to actually influence a public official in the performance of any official act.

Section 201B1, as I have already instructed you, there you must find specific intent to influence a public official in the performance of his official acts. In order to prove a violation of 201F it is not necessary to find any such specific intent, nor is it necessary for the Government to

prove that the payment was made corruptly. The purpose of 201F, which is called the lesser included offense of Section 201B1, is to prohibit an individual dealing with a Government employee in the course of his official duties from giving the employee additional compensation or a tip or gratuity for the purpose of an official act done or about to be done. The gift is a violation. Even in the absence of evidence that the giver sought a particular preference, you must find however that the giving was done knowingly and purposely and not through some accident, mistake, inadvertance or misunderstanding.

The Government must prove that the purpose of the gift is to give an additional reward, gratuity or tip by reason of an official act performed or to be performed by the public official.

In other words, you ask yourselves whether or not the gift would have been made to the public official in the context in which it was made, if you find that it was in fact made, if the public official was about to perform or was performing or had performed some official act.

Again it is not necessary under this section that the Government prove that the gift caused or

prompted or in any way affected the official act or the extent or the manner -- I will repeat that sentence again. I don't like that sentence myself.

Again it is not necessary under this section that the Government prove that the gift caused or prompted or in any way affected the official act or the extent or the manner or the means by which the official act was done, but at the same time you must be satisfied beyond a reasonable doubt that the gift was given as an additional reward for the performance of some official act.

Now, if you find in this case beyond a reasonable doubt that the defendants Harry Bernstein, Rose Bernstein, Florence Behar and/or Eastern Service Corporation either made payments directly or that any one of them aided and abetted payments to the FHA appraisers, Edward Goodwin and Joseph Jankowitz, in any or all of the counts in which each is charged, you should next consider whether such payments were made in violation of 201B1 or in violation of 201F, bearing in mind the differences in the essential elements of each of the offenses as I have described to you and have explained to you.

Charge of the Court

In your deliberation you should proceed forth in the following manner: First you should determine with respect to each defendant whether or not the payment of money was made corruptly and with intention of influencing the official act of a Government official.

If you are convinced beyond a reasonable doubt that the payment was so made, then you must convict the defendant or defendants of that count. If you are not convinced beyond reasonable doubt that the payments or payment in the particular count or counts under consideration was made corruptly and with the intention of influencing the official acts of the Government official, then you must acquit the defendant or defendants on that count.

If you acquit the defendant or defendants on a particular bribery count in the indictment you must next consider whether the payment of money was made as a tip or gratuity or because of an official act done or about to be done in violation of Section 201F.

If you are convinced beyond reasonable doubt that the payment of money was so made, then convict the defendant or defendants of a violation of 201F

in the particular count or counts.

If you are not convinced beyond any reasonable doubt that the payment of money was so made then you must acquit the defendant or defendants of a violation of Section Subdivision 201F of 201.

Now, I have previously charged you as to the elements of the offense of bribery and as to the elements of the lesser included offense of giving an unlawful gratuity.

In addition you have been instructed as to what constitutes aiding, abetting and counseling these offenses. In arriving at a decision as to whether or not any defendant aided or abetted or committed or counseled, aided, abetted or counseled a bribe or unlawful gratuity it is not necessary for you to find that the person who is alleged to have aided, abetted or counseled the payment of a bribe or unlawful gratuity was present at the time the payment was made.

One charged with aiding, abetting or counseling a payment of a bribe or unlawful gratuity need not be present when a payment is made and may be found guilty even though he or she was not present at the time of such payment.

Similarly, one charged with aiding, abetting or counseling the making, passing, uttering or publishing a false statement to the FHA need not be present at the time the statement is made.

The jury will bear in mind again that the law never imposes upon a defendant in a criminal case the burden or duty of calling witness or winesses or producing any evidence.

The burden is on the Government to prove beyond a reasonable doubt and that burden never shifts.

Now, ladies and gentlemen of the jury, I am about, believe it or not, to end my charge and here I must instruct you as follows: It is your duty as jurors to consult with one another and to deliberate with a view of reaching agreement, if you can do so without doing violence to individual judgment.

Each of you must decide the case for yourselves, but do so only after after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations do not hesitate to re-examine your own views and change your opinion if convinced that it is erroneous.

Your task is one of conscience and pride of

opinion has no place in matters of conscience.

You do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors or the mere purpose of returning a verdict.

There is nothing particularly different in the way a jury should consider the evidence in a criminal case from that in which all reasonable persons treat any question, depending upon evidence presented to them.

You are expected to use your good common sense. Consider the evidence in the case for only those purposes for which it was admitted and give it a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If the accused be proved guilty beyond a reasona he doubt, say so. If you are not so con vinced and if it is not so proved, say so too. You are not partisans. You are the judges, judges of the fact. Your sole interest is to ascertain the truth from the evidence in the case.

When you have reached a verdict and you are ready to report, simply advise the Marshal who will

be outside your door as you already know that you have reached a verdict without disclosing to him or anybody orally or in writing what your verdict is. Your verdict must not be disclosed to anyone before you deliver it orally in the courtroom and respond to questions by either the Court or by the clerk.

If you should, during the course of your deliberations, come upon a conclusion as to any one defendant and that includes any count or counts which may be against that defendant, in other words the entire case against a defendant, you are entitled to report that verdict. In other words, if you are discussing a defendant in say count 1 and 30 and 40 and 50, and you arrive at a verdict only as to Count 1 as to that defendant, do not return that verdict. It has to be a complete verdict as to any one defendant.

If you have a complete verdict as to guilt or innocence as to any particular defendant, advise the Court and the Court will receive that verdict at that time.

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(continued next page)

THE COURT: (Continuing.) However, you need not do that. You may consider the whole case, as you wish, and make your determination known at the time you have arrived at a verdict.

Now, if you wish to communicate with the Court in any way, do so. There you do so in writing, using Mr. Loschert, your juror number 1, as your intermediary and spokesman, and allyou do is write a note, give it to the marshal, and the marshal will give it to me and I will take it up with the lawyers in the case, so that when you have any such communication, you let the marshal know and I will receive it from him.

If you want any particular exhibit or if you want any particular part of any of the testimony read, when you are talking about testimony, try to particularize exactly what part of the testimony you are referring to. We will attempt to locate it from the transcripts or from the reporter's notesand we will call you in and we will read that part to you, if you so desire. At the same time, if you want to hear again any part of my charge, you are at liberty to hear it, by asking for what particular part and I will see to

it that we will have the reporter read that part to you.

To start off with, I think it is best that you start your deliberations without my throwing in every exhibit that has been introduced into evidence here. I would suggest first you begin your deliberations then if you find that you need any particular paper or papers, just ask for them and they will be available to you.

The form of your verdict, which, by the way, must be given separately, on each count, as to each defendant, is simple. Your verdict must be either "Guilty or not Guilty," and it must be given separately for each count and for each defendant, as it must be a unanimous verdict on each count.

Your verdict need not be the same on each count, and that is where your memorandum of guilty verdict will be of help. When you are asked "How do you find the defendant" so and so on Count 1, all you do is turn to that Count 1 and you see what you did with respect to that particular one because you will be asked that same question as to 65 different counts and all nine defendants.

So that that memorandum of verdict, you keep it and you check off either "Guilty" of "Not Guilty" under each count as to any particular defendant, and remember that that memorandum of verdict stays with you and is with you for your purpose, so that at the end of the case and at the end of your deliberations, that goes back to the Court and becomes part of the official record, and that is why they were marked the Court exhibits.

Your verdict on each count, as I indicated to you, will be delivered here in this Courtroom, openly and orally, by Mr. Loschert in response to questions which will be put to him by the Deputy Clerk and the Court will be addressing him directly and asking him how he finds or how the jury finds.

Now, before I am going to say to you that you may start your deliberations, and before I do the unpleasant task of excusing the alternates -- you have to bear with me a little longer -- I have to at this part of my charge give the lawyers a chance to say something to me about my charge, and I would like to talk to them a few minutes before closing the curtain down and saying the case is yours.

So if you will please go to your jury room for as short a time as I can help it, then I will call you back and tell you you could start deliberating, but, in the meantime, the admonition still pertains.

Okay. In other words, do not start deliberating until I completely finish.

(The following occurred in the absence of the jury.)

THE COURT: Okay, Gentlemen.

MR. BRODSKY: May we take a brief break, Judge, before we start.

THE COURT: No sir. Right now. I am not going to hold this jury all day.

MR. BRODSKY: I have to go.

THE COURT: Oh, all right.

Let's all take a short break, as short as we possibly could make it.

MR. SOVIERO: Thank you, your Honor.

(Recess taken.)

(The following occurred in the absence of the jury.)

THE COURT: Okay. Who wants to start? Mr. Brodsky?

MR. BRODSKY: Thank you.

THE COURT: Okay, Mr. Brodsky.

MR. BRODSKY: If your Honor please, I'd most respectfully except to that portion of your Honor's charge where your Honor stated as follows. I think you can find it at page 21233 of the transcript, beginning at line 23.

THE COURT: 21000 what?

MR. BRODSKY: 233. That's June 13th.

THE COURT: Yes.

THE CLERK: Is it in order, your Honor.

THE COURT: If I got it, it will be in order.

THE CLERK: I'll get it, your Honor.

The page number?

MR. BRODSKY: 21233.

THE COURT: Okay, Mr. Brodsky.

MR. BRODSKY: Line 23, "An innocent misrecollection, like Fey's recollection, is not an uncommon experience."

THE COURT: "Fey's recollection"? This is in context with what defendant?

MR. BRODSKY: You say, for instance, you started by saying, "Now, inconsistencies or discrepancies ..."

THE COURT: That is in the early part of my

charge.

MR. BRODSKY: I beg your pardon.

THE COURT: In the early part of my charge.

MR. BRODSKY: In the early --

THE COURT: Inconsistencies?

MR. BRODSKY: Yes, it was in the early part. In the relative early part.

THE COURT: Yes.

MR. BRODSKY: You started at page 21206.

THE COURT: I just want to get that part of my charge that I was using so that I — yes.

MR. BRODSKY: You had been talking about Mr. Milton Francis.

THE COURT: Yes, and I was reading very carefully, as you know. I say "inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you, the jury, to discredit such testimony."

So far word for word.

"Two or more persons witnessing an incident or a transaction may see or hear it differently. An innocent misrecollection, like failure of recollection, is not an uncommon experience."

I don't know where that "Fey's recollection"

got into the record, and at this time I say very specifically, I did not say that, because I have it right here and I followed my charge word for word.

"Innocent misrecollection, like failure of recollection." Not "Fey's recollection." "Like failure of recollection."

So I would ask that that word in the record be changed. "An innocent misrecollection, like failure of recollection." "Fey's" is not in there at all in my charge. "Is not an uncommon experience."

MR. BRODSKY: I take it that the transcript that your Honor has is the same as the transcript that I read from.

THE COURT: Yes. The word "Fey" is in there.

MR. BRODSKY: F-e-y.

THE COURT: Yes. I never used the names in my boiler plate part of my charge. So I would say that that word, which is the first word on line 24, should be deleted.

MR. BRODSKY: I don't suppose --

THE COURT: Page 21233, the first word on line 24, "Fey's," just excise it. It does not belong there.

MR. BRODSKY: I respectfully except to --

THE COURT: Just one second. I want to make sure of that now. "An innocent misrecollection, like failure --" -- oh, now I see what. I used the word "failure" and they put in "Fey's". It's a good thing I looked at it. In my charge I have "an innocent misrecollection, like failure of recollection is not an uncommon experience."

So that the word "Fey's" should not be in there but "Failure". "Failure" should be in there.

MR. BRODSKY: I will accept that correction.

THE COURT: Okay. Next.

MR. BRODSKY: I respectfully except to that portion of your Honor's charge wherein your Honor stated, and I quote, from page 21285 --

THE COURT: 21285?

MR. BRODSKY: Line 10.

THE COURT: Yes? "If the jury finds ..."

MR. BRODSKY: "If the jury finds from all the evidence beyond a reasonable doubt that a defendant showed a continued indifference to the truth or falsity of statements, coupled with a knowledge that in some cases the statements were false, it may infer the required knowledge by the defendants that false statements would be submitted."

THE COURT: If you will give me a chance to find that part in my charge? That had to do with the false statement counts? Was that it?

MR. DE PETRIS: The conspiracy.

THE COURT: The conspiracy count?

MR. DE PETRIS: Yes.

THE COURT: I thought so. If I can find that part in my charge, so that I will be able to refer to it.

(Continued on next page.)

BRODSKY: I think I should continue going because your Honor goes further and says -- line 19, "Stated in another way, if you find beyond a reasonable doubt that a defendant agreed to participate in the submission of credit applications to the FHA, being aware of a high probability that a false statement would be included, or knowingly that the likelihood of false statements, likelihood of false statements was great, and if you also find beyond a reasonable doubt that false statement were actually submitted to the FHA, then the element of knowledge, of actual knowledge as required in the conspiracy count is sufficient."

I most respectfully except.

THE COURT: May I check that with mine first? I want to make sure that that has all the words in it. If you find -- where is that now? Where did you start?

MR. BRODSKY: 21285.

THE COURT: What line?

MR. BRODSKY: Line --

THE COURT: If you find from all the evidence?

MR. BRODSKY: Line 10, "If the Jury find from all the evidence," that's line 10.

THE COURT: "If the Jury finds from all the

evidence, beyond a reasonable doubt, that a defendant showed a continued indifference to the truth or falsity of statements, coupled with a knowledge"-- there should be a comma there but I guess we don't have to argue about commas. After the word "coupled," there should be a comma, "coupled with a knowledge that in some cases" -- "coupled with a knowledge" --

MR. BRODSKY: Let me read it to you and you can follow it.

THE COURT: "In some cases the statements were false, it may infer" -- that is the Jury, of course -- "the required knowledge by the defendant that false statements would be submitted."

That's exactly what I said.

MR. BRODSKY: That's what I am excepting to.

THE COURT: "Stated in another way, if you find, beyond a reasonable doubt, that a defendant agreed to participate in the submission of credit applications to the F.A, being aware of a high probability that a" -- I had "that false statements" but I guess here it's "that a false statement would be included, or knowing that the likelihood of" --

MR. BRODSKY: "Knowingly"?

THE COURT: "Kowingly," yes. "That the" -- no. I have in my charge "knowing."

MR. BRODSKY: Well, it doesn't make any difference.

THE COURT: Or knowingly, I said.

MR. BRODSKY: Okay.

THE COURT: "Knowing that the likelihood of false statements, the likelihood of false statements was great, and if you also find beyond a reasonable doubt that false statements were actually submitted to the FHA, then the element of actual knowledge is"-- "as required in the conspiracy count is satisfied."

MR. BRODSKY: I think there -- a few differences, Judge.

THE COURT: Where?

MR. BRODSKY: "Submitted" after the FHA."

THE COURT: After the word "FHA."

MR. BRODSKY: "Then the element of knowledge."

THE COURT: "Then the FHA" -- let me get with you. "Then the element of actual knowledge" --

MR. BRODSKY: You say "Then the element of knowledge, of actual knowledge."

THE COURT: Yes. I just repeated myself. I said "The element of actual knowledge."

MR. BRODSKY: Are we straight, Judge? Did you say, "Submitted to the FHA, then the element of knowledge, of actual knowledge, as required in the

conspiracy count, is sufficient"?

THE COURT: "Is satisified." It should be "satisfied," not sufficient.

My charge indicate "is satisfied."

MR. BRODSKY: The difference is immaterial.

THE COURT: Whatever it is.

MR. BRODSKY: The word "satisfied? I'll take that.

THE COURT: Yes. You take exception to that?

MR. BRODSKY: I except to that.

THE COURT: Okay. Your exception is noted. I'm sorry. Did you want to say something?

MR. DE PETRIS: No, your Honor.

THE COURT: I just ignored you. I didn't mean to. Please.

MR. DE PETRIS: That charge was in accordance with the case we submitted.

THE COURT: No. I thought he might want to say something. He's just taking exception.

MR. BRODSKY: I'm taking exception, Judge. there is nothing he can say. It wa said by you.

THE COURT: Okay.

MR. BRODSKY: If your Honor will turn to page 21288, Corporate Liability.

THE COURT: Yes.

MR. BRODSKY: I call your attention, beginning at line 17 of that page --

THE COURT: In order to find a corporation?

MR. BRODSKY: In order to find the -- I respectfully except to that portion of your Honor's charge, wherein your Honor stated to the Jury, "That in order to find a corporation guilty of a crime, however, it is not necessary for the Government to prove that an officer or director of the corporation is involved in the commission of the crime. It is the function delegated to the employee, which determines his power to engage the corporation in a criminal transaction. The critical question in this regard is whether or not the employee was acting in the area of responsibility assigned or entrusted to him by the corporation. If the employee violates the law, while acting in the area of responsibility, then the corporation may be held responsible.

"If the requirements I mentioned above, just a few moments ago, are met by proof beyond a reasonable doubt, then it is not defense by a corporation to a criminal charge that the corporation has not authorized the illegal conduct, that the actions have been done without the knowledge of the corporation's officers, or directions."

THE COURT: "Or directors."

MR. BRODSKY: "Or directors," both, you have.

THE COURT: Oh.

MR. BRODSKY: "Or direction or directors."

THE COURT: I probably misstated "directors" and then said "or directors."

Go ahead.

MR. BRODSKY: It makes sense either way.

"Or that the unlawful activity" --

THE COURT: The word should be "directors." "Directors."

MR. BRODSKY: Leave out one phrase.

THE COURT: I don't care.

MR. BRODSKY: I say it makes sense either way, Judge. "Or directors or that the unlawful activities of the employees were against the policy of the corporation, as established by its officers and directors." That is the portion that I except to.

THE COURT: My charge -- apparently when I delivered it, I wanted to say the word "directors" and I said "direction." Then I said "or directors." But --

MR. BRODSKY: If you want to take out "or direction," it's all right with me.

THE COURT: I don't care.

MR. BRODSKY: It doesn't --

THE COURT: Doesn't make any difference.

MR. BRODSKY: Doesn't mean anything there.

I call your Honor's attention now --

THE COURT: You take exception to that part?

Your exception is noted.

MR. BRODSKY: Yes, your Honor.

I call your Honor's attention now to that part of your Honor's charge, which is found at page 21294, beginning with line 5.

THE COURT: Let me catch up with you a minute.

MR. BRODSKY: It starts --

THE COURT: Yes. Just give me a chance to find it in my charge.

"In addition to"? Go ahead.

MR. BRODSKY: Yes. Got it?

THE COURT: Yes, sir.

fols.

(Continued on next page.)

MR. BRODSKY: I respectfully except to that portion of your Honor's charge wherein your Honor told this jury or charged this jury, that in addition to testimony regarding these meetings, MR. Goodwin testified that on various other occasions during the years 1967 to 1971, inclusive, he met with Harry and/or Rose Bernstein at the offices of the Eastern Service Corporation, that during these meetings, certain appraisals, which Mr. Goodwin conducted were discussed, and that at the end of each of such meetings, Mr. Goodwin was paid some money.

I chargeyou, that the testimony concerning these additional meetings was offered solely and received solely for a limited purpose, such testimony -- and I am now talking about those additional discussions, other than the FHA files which were marked in evidence in part of this case -- those additional meetings, as I have said, that evidence, that testimony was received for a limited purpose.

Such testimony does not relate to any substantive count, charging bribery in the indictment, and therefore, may not be considered by you in determining the guilty or innocence of any of the defendants charged with bribery on any one or more of the substantive bribery counts.

Those additional meetings only, not the ones that they were discussed -- that the FHA files, where they were offered in evidence may -- it may only be considered that -- that testimony of those additional meetings, it may only be considered if you find that the testimony -- if you find that testimony credible, as it may bear on the question of the intent with which the payments of money charged in this indictment were made.

You may not consider that testimony against anyone other than the participants to those conversations. That is, Harry Bernstein, Rose Bernstein, and Edward Goodwin himself. If you find that testimony credible, you may, if you accept it, consider it as bearing upon the relationship that is alleged to have existed between Edward Goodwin, Rose Bernstein and Harry Bernstein, the organization and the structure of the alleged conspiracy as it pertains to the participants to those conversations as to their respective goals.

That testimony --

THE COURT: As to their respective roles. All right. Roles or goals.

MR. BRODSKY: Judge, I read it goals.

THE COURT: I have roles in my charge.

3 MR. BRODSKY: That testimony wasnot received and I charge you as a matter of law,that it cannot be used by --

THE COURT: I thought I would want to change that word in the record. It's not goals, it's -- in my charge I had roles. What line?

MR. BRODSKY: It's all right with me.

THE COURT: It doesn't make any difference. What line is that?

MR. BRODSKY: Line 20. 21,295.

THE COURT: Okay.

MR.BRODSKY: Continuingon ppage 21,296.

THE COURT: Yes.

That testimony was not --

MR. BRODSKY: I repeat, that testimony was not received and I charge you, as a matter of law, that it cannot be used by you to establish the existence of the conspiracy.

Nor was it received to establish the membership of the conspiracy, except as to the participants to those conversations.

Therefore, such testimony may be considered by you to the extent you find it relevant and believable only as bearing upon any claimed arrangement among the three participants, wherein they had established

a continuing course of conduct.

THE COURT: And whether they had established a continuing course

MR. BRODSKY: And whether they had established a continuing course of conduct.

THE COURT: Is that in there?

MR. BRODSKY: Correct.

THE COURT: Yes. And whether -- yes. Okay.

MR. BRODSKY: I except to that portion of your Honor's charge, which I have just --

THE COURT: Your exception is noted. Just a second,Mr.Brodsky. They can have their lunch. Let them have their lunch as long as it's been delivered. Let them have it.

THE CLERK: Yes, your Honor.

THE COURT: That will save time.

MR. BRODSKY: I refer your Honor now to page 21,296, line 25, the last line, beginning with the word on that line.

THE COURT: Yes. Go ahead.

MR. BRODSKY: I respectfully except to that portion of your Honor's charge wherein your Honor stated, "And then later on inthe case, and another example of such testimony is Mr. Fey's testimony concerning conversations between him and other employees

of Eastern Service Corporation concerning his observations of Mrs. Kapraki's applications. That testimony was not received to establish the truth of the contents of any of the statements any person made in those conversations nor was it being received as evidence of any past actions.

The evidence of such conversations is solely to be considered on the question of the witness' own state of mind or, in the case of conversations with other employees of Eastern Service, the state of mind of the other participants in those conversations.

And I most respectfully except.

THE COURT: Your exception is noted.

MR. BRODSKY: I refer your Honor now to last Friday's transcript.

THE COURT: 300 something? Page? Page, Mr. Brodsky? That was Friday?

MR. BRODSKY: 21 -- wait a minute. Starting with page 21,340, Judge.

THE COURT: Yes.

MR. BRODSKY: I respectfully except to that portion of your Honor's charg wherein your Honor stated, line 19, Judge:

"Therefore, in determining the issue as to intent, the jury, you, is entitled to consider any

6 statements made and any acts done or omitted -- that should be omitted --"

THE COURT: By the accused.

MR. BRODSKY: "-- omitted by the accused and al the facts and circumstances in evidence in the case which may aid you in the determination of his state of mind including similar and prior acts, if any have been proved in this case, and as to the defendant Mr. Cronin."

THE COURT: Right.

MR. BRODSKY: I respectfully except to that portion of your Honor's charge.

THE COURT: Your exception is noted.

MR. BRODSKY: 378.

THE COURT: If any were proved.

MR. BRODSKY: Yes.

THE COURT: What page next?

MR. BRODSKY: 21,378, line 7.

THE COURT: 378.

MR. BRODSKY: "Knowledge that the statement or statements -- "

MR. DEPETRIS: What page?

THE COURT: 21,378.

MR. DE PETRIS: Thank you.

MR. BRODSKY: Line 7.

7 I respectfully except to that portion of your Honor's charge wherein your Honor charged this jury that, "Knowledge that the statement or statements were false may be inferred from circumstance that would convince a man of"-- that should have been of ordinary intelligence, -- "that this is the fact."

THE COURT: Yes.

MR. BRODSKY: "The element of knowledge may be satisfied by proof that a defendant deliberately " -- that sould be deliberately --

THE COURT: Deliberately, should be deliberately. Not deliberated.

MR. BRODSKY: "-- closed his eyes to what otherwise would have been obvious to him.

"Thus, if you find beyond a reasonable doubt that a defendant acted with reckless disregard or whether the statement made, passed or uttered or published to the Department of Housing and Urban Development or the Federal Housing Administration and with a conscious purpose to avoid learning the truth, the requirement of knowledge would be satisfied unless the defendant actually believed that the statements were not false."

THE COURT: Your exception is noted.

MR. BRODSKY: 424.

8 THE COURT: Yes.

MR. BRODSKY: Line 4.

I respectfully except to that portion of your Honor's --

THE COURT: Just a second. You are taking down the page?

MR. DE PETRIS: Yes, your Honor.

THE COURT: 12, 424.

MR. BRODSKY: 424.

THE COURT: Line 4.

MR. BRODSKY: I respectfully except to that porition of your Honor's charge wherein your Honor told this jury, however -- "However, it is not necessary that the Government prove to a certainty that a defendant knew a statement was false. Although guilty knowledge cannot be established by proof of mere connection on the part of a defendant, such knowledge is established if the defendnat was aware of the high probability that a statement was false unless that defendant actually believed that the statements --"

THE COURT: That the statement.

MR. BRODSKY: " -- the statement was not false."

I respectfully except to that portion of your Honor's charge.

THE COURT: Noted.

MR. BRODSKY: 21425, Line 11: "I respectfully except to that portion of your Honor's charge wherein your Honor charged this jury as follows: -- and I quote: "Now, in the light of a National Housing Act, part of which I read, and about which you heard testimony from Mr. Hipps, I believe and possibly Mr. SAndars, the Federal Regulations which were set forth in the eligibility requirements of mortgagees who submit applications to the FHA, and which set forth eligibility requirements for mortgagors, in the instructions contained in the Mortgagees Handbook, the requirement that a mortgagee certify that all information in an application is true and complete to the best of its knowledge and belief, and the underlying policy of reliance by the FHA on the mortgagee to submit complete and truthful information, you may find that the FHA program places a duty on the mortgagee to investigate and exercise proper credit judgment with reference to statements contained --"

THE COURT: I have with respect to.

MR. BRODSKY: That's what I said.

THE COURT: I'm sorry.

MR. BRODSKY: With respect to statements

contained in applications for mortgage insurance submitted to the FHA.

Now, if you find there is such an affirmative dity, then the standard of recklessness which I mentioned earlier is applicable to the defendant Eastern Service Corporation, which is an approved lender -- mortgagee, rather. You should also in that regard, consider that persons played a role.

THE COURT: What persons?

MR. BRODSKY: I'm sorry, you should also consider in that regard -- strike that out.

You should also in that regard consider what persons played a role in setting the policy of Eastern Service Corporation with respect to credit applications, and what person had the responsibility to sign the mortgagee certificate on behalf of Eastern Service Corporation.

Also in that regard, you may determine whether or not the evidence shows beyond a reasonable doubt that the defendants Harry Bernstein and Florence Behar occupied such a position. You may find that any person in such position had an affirmative duty to insure that statements made in

the applications were true, and if you so find, then the standard of recklessness is also applicable to such a person.

THE COURT: Your exception is noted.

MR. BRODSKY: I respectfully except to your Honor's grouping Melvin Cardona, Florence Behar, Rose Bernstein, also known as Rose Shorenstein, Eastern Service Corporation and Harry Bernstein so as to give the jury the impression that they acted as a single unit.

THE COURT: I don't think that impression was given. I said I would consider them in groupings such as the two were FHA employees, the other two were credit reporting agency and Melvin Cardona was an employee of Eastern Service, Mrs. BEhar was an employee and officer of Eastern Service, Eastern Service was Eastern Service. And Mrs. Bernstein was the wife of Harry Bernstein.

MR. BRODSKY: I repeat, I except to that portion of your charge.

THE COURT: You may have that exception.

MR. BRODSKY: I except to that portion of your charge where you joined Harry Bernstein with Melvin Cardona in the definition you gave of

Section 2 of Title 18, United States Code, and the alleged violation thereof.

I further except to that portion of your charge where your Honor stated you may consider evidence of additional payments as bearing on the intent with which the payments were made.

THE COURT: Is that what I said this morning?

MR. BRODSKY: Yes. I can't give you the exact quotation.

THE COURT: I have it here if you want me to read -- reread it. But go ahead.

MR. BRODSKY: That's all I have.

THE COURT: All right.

Now, Mr. Soviero.

MR. SOVIERO: I join in all the exceptions enunciated by Mr. Brodsky, and add the following:

I except to that portion of your charge wherein you told the jury that the purpose of the Government in severing defendants from this case was to make this indictment more manageable.

I further except to that --

THE COURT: Did I use that exact wording?

MR. SOVIERO: I'm paraphrasing, but I have -- I am referring to that portion of your charge.

THE COURT: To make the case more manageable, I may have used that.

MR. SOVIERO: I am calling your attention to that portion. I further except to that portion of your Honor's charge where in reading count two -- I believe you were reading count two of the indictment, wherein you named defendant Rose Bernstein, also known as Rose Shoranstein as a defendant in that count. I submit that that count was dismissed as to the defendant Rose Bernstein.

THE COURT: Yes, it was dismissed as to her, and I indicated that to the jury in reading that count. I don't excise names. We were reading the counts against Mr. Cronin, I think, and that name happened to be in that count. That stays.

MR. SOVIERO: I except to that portion. I submit the count having been dismissed against my client, her name should have been excised. I further except to thatportion of your charge -- I'm sorry, that was enunciated by Mr. Brodsky. I except to the order of your charge. I except to the fact you have inverted the names of the defendants choosing to proceed from the last-named defendants to the first-named defendants.

I further except to that portion of your charge which was conducted in the last hour and a half last Friday. After marshalling the evidence, after stating that you were not going to marshal the evidence, you then choose to marshal the evidence in the form, or some of the evidence, in the form of reading to the jury from some 15 exhibits.

I submit that was done with a purpose and intent on your Honor's part and that was to use up that hour and a half on inconsequential matters for the purpose that this case could be adjourned for the weekend.

THE COURT: That is a despicable remark on your part. I don't know how to continue saying to you that your trial techniques are not only rephrensible but contemptuous. You know there were many strong voices raised, particularly by Mr. Obermaier, that I read each one of the credit applications, and I was trying to find a way of not doing so, if you remember.

But you have a convenient way of dislocating things and using your own interpretation. I wanted no more to read those ten and the Government's 18 than the man in the moon. That was insisted on.

I wasn't trying to delay because you know, and I will tell you now, that in the entire more than eight months we have been on trial, that was the first Friday that I asked the jury to sit in the hope I might be able to conclude my charge by Friday afternoon, which was physically impossible and I told everybody that I was exhausted, and I had a headache. I know my situation. I worked two days before that on the charge and I had my office call every lawyer who was on my Friday calendar to put it off. We're from 10:20 here this morning, and it wasn't my fault to start at 10:20.

MR. SOVIERO: Nor was I.

THE COURT: No, but there was another attorney delayed. It's not 12:20, two hours. Even if I had had those two hours when we stopped at 4:10, that would have made it 6:30. You know we never went beyond four o'clock. We agreed we would stop at 5:30 during deliberations. I want the record to note my remarks concerning your statements.

MR. SOVIERO: The record should note that your Honor finished your charge having started at 10:20 that you finished your charge at 11:30. I submit to your Honor that's an hour and ten minutes.

THE COURT: You are not going to put anything on the record that has no inferences. After that you know I couldn't discharge an alternate juror. I can't do that until after you fellows, after all the argument you want.

MR. SOVIERO: I'm not raising that point.

THE COURT: What is the purpose of you saying it took me one hour and twenty minutes this morning?

MR. SOVIERO: That you could have completed this charge on Friday.

THE COURT: I would have to adjourn to grant you fellows the opportunity to make motions.

MR. SOVIERO: The reason you didn't do that would be that the jury would have your Honor's charge with respect to my client fresh in mind when they went to deliberate, and those are my exceptions.

THE COURT: Noted.

MR. SOVIERO: I join in any exceptions that Mr. McEvoy may raise.

MR. MC EVOY: I --

THE COURT: Mr. McEvoy is going to be talking for Eastern Service Corporation.

MR. SOVIERO: I understand that.

THE COURT: Your client is Rose Bernstein.

MR. SOVIERO: As they apply to Rose BErnstein.

THE COURT: All right. If they do.

MR. MC EVOY: I respectfully except to the failure of your Honor to charge in respect to count 9. This is the problem I identified to you with respect to Mr. Klein's summation, concerning the October 1969 date. My argument was predicated on the Bill of particulars which cites January 8th, 1969. You said you would take care of it in your charge.

THE COURT: That was after the next day we got together. At that time I reserved decision.

MR. MC EVOY: I find nothing in the charge as such.

Secondly, you referred to a violation of Section 2 of the United States Code. There is not, to my knowledge, the possibility of violating Section 2. That's merely a vicarious liability statute.

Since you are submitting a memorandum of verdict to the jury, it's quite likely the jury may be confused with respect to Sections where it is recited and Section 2. The jury might say not guilty to the substantive section, but perhaps guilty to Section 2. I except to the repeated references in your charge.

THE COURT: Count 9 charges 1010 and 2.

MR. MC EVOY: Throughout your charge, your spoke of violating Section 2. That is a legal impossibility. Section 2 is a vicarious liability statute. There is a possibility the jury may be confused.

Further and without wishing to disagree unneccessarily, I object to your Honor's changing the record insofar as the reference to Mr. Fey is concerned at 21233. That's the section where you compared your written charge to that in the transcript. It's entirely possible that the reporter's accuracy is something which the Government hold in high esteem.

In the event you may have misconstrued rather than the reporter, it may leave the jury with the impression you have given a probation to Mr. Fey's memory. Since he is a significant witness on notice, and the whole issue of knowledge on Eastern Service Corporation, I request that you say to the jury, if I did say this, this is not what I meant. I meant to express no opinion as to Mr. Fey's opinion.

THE COURT: I shall not do that. My

charge has failure instead of Fey. I will not charge it. You are asking that it be rechanged.

MR. MC EVOY: No, Mr. Brodsky may have no objection. I do.

THE COURT: Your exception is noted.

MR. MC EVOY: Next I object to those portions of the charge where your Honor went outside of the trial record referring the jury to the pleas of guilty by Francis Dries and Mr. Bell, as well as the plea of nolo contendre on the part of Pat Buckley. I think that was unnecessary and it is exacerbated by the failure right after to advise the jury a plea of guilty is purely personal.

THE COURT: I did mention that.

MR. MC EVOY: Yes, 13 pages later. The physical separation and temporal separation creates a problem.

(Continued on the next page.)

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Further, 21214 I find it unnecessary and take exception to the fact that severance was accomplished with respect to the defendants of -- I am sorry, "to make this a more manageable and more ordinary trial with less people involved."

I take exception to your charge at pages 21219 and 21220 where you spoke about evidence as that which the witnesses told you. I am paraphrasing it. The phrase at 21219: "Evidence is what the witnesses have told you on their oaths what the exhibits received in evidence contained, what counsel agreed and stipulated to in your presence."

I except to that. It fails to take note at that point in time that the evidence is what the witnesses have told you if found credible and trustworthy.

You have stated that at other parts of the record but to be careful I must take exception to it.

Page 2120 over to 21, you made the first of references of your intentions to give the factual data reports in forms 2900-1 with supplementary exhibits as soon as they begin deliberations.

I object once more to that because it wasn't contained in the charge. With respect to your charge at 21224 your Honor began to discuss inferences and presumptions and at page 21225 and drawing a

distinction in that situation where the facts and circumstances are susceptible in two instances, one to innocence and the other to guilt, you stated: "Unless the inference of guilt appears to us to be the inference that preponderates beyond a reasonable doubt."

I take exception to that language.

Further at 21227 you began to refer to the right of the defendants not to take the stand but certain defendants called witnesses and you made what I consider to be an unfortunate reference at line 23 when you said, now there are competent witnesses and their testimony should not be disbelieved merely because they are defendants who are testifying on behalf of a named defendant.

I suggest that has a rather narrow implication and that these witnesses were defendants or defendants witnesses and your Honor harbors some belief they are not worthy of belief.

That is the way the language comes across.

I know you didn't intend that and I wonder if you would correct that.

THE COURT: No, I shall note that. That wasn't my intention.

MR. MC EVOY: Your Honor goes further at 21229 to talk bout the concept of vital interest in respect

to which the witnesses and the defendant's testimony should be measured.

I submit that insofar as that vital concept is applied to defendant's witnesses rather than defendants is erroneous.

At 21229 your Honor states in your charge explicitly beginning at line 16, I will get to that later -- all the Government's witnesses except those I have just mentioned are either co-conspirators or at a minimum accomplices.

I submit that is erroneous.

What you should have said, I submit, is according to the Government's theory of the case which is the language which is contained in the defendants Eastern Service, Harry Bernstein and Rose Bernstein's request to charge 15.

I object because of your failure to give request to charge number 15 just mentioned by me a moment ago even though you denied it, except as charged and I find the charge inadequate in that respect.

And following that, that portion of the Court's charge which deals with credibility of accomplice and co-conspirator testimony.

I am saying our request number 15 is the language which the Circuit has explicitly sanctioned and has mandated the use of that language rather than the language submitted by the Court.

Further with respect to the transcript at page 21269, your Honor was at this point talking about the fact that certain counts had been dismissed against certain of the defendants.

At line 20 and following you said: "The ruling by the Court as to these counts are not to be taken into account by you as to your action on the remaining counts."

I take exception to that portion of the charge. I think it should have said further my rulings are not to be construed by you as expressed in any opinion as to the remaining counts for the defendants.

I further take exception to those portions of your charge at pages 21279 and following which you advised the jury that it is possible to have a single conspiracy with two objectives or goals and in the text that follows that it is possible for an individual defendant to join that conspiracy if he joins with an understanding of only one of the objects, so long as two or more of the defendants joined having knowledge of the scope of both of the objects of the

conspiracy.

NOw, with respect to the element of knowledge as it is charged in the context of the conspiracy count, you make reference at page 21285 and following to that language to the difference coupled with knowledge of falsity.

You do not talk in the conspiracy count of wreckless disregard but high probability. Both Mr. Obermaier and I have argued with respect to this point previously as I understand the Circuit ruling you have charged it with knowledge, and my point is that your charge with respect to knowledge under conspiracy is different from your charge as to the issue under the substantive count. I find the charge, assuming the substantive charge to be accurate under the conspiracy count, to be confusing, particularly because you used the language of high probability and Judge Friendly has indicated that language modeled on the penal code tends to reduce matters lightly and as such can be saved by the grafting of other language.

Simply I except to those portions of your charge where you deal with the issue of corporate criminal liability without specifying it in detail.

Pages 21299 and following you charge with

respect to overt acts and at 21301 you speak of overt acts as being -- well, it is at line 9, it may be as innocent as the act of a man walking across the street or driving an automobile or using a telephone and that may be well generally, but I think it is error because the overt act as charged are all crimes.

I think you may have misled the jury in suggesting that they can find something in a non-criminal character in an overt act. Further, with respect to the charge I find it confusing and except as to which object of the conspiracy need the overt act relate to and by whom.

Can the jury properly understand your view of the law and find a definite charge in the bribery goal of the conspiracy that it can commit and thereby satisfy the jurisdictional requirements and overt act addressed to the false statement aspect of the conspiracy?

I object to that.

Further with respect to the transcript at 21345 -- I should refer to your charge as you have charged rather than the transcript.

With respect to your charge at 21345 you speak of the issue of the Hardiman chart. From the text I understand it to be an attempt to convey to the jury

a limited purpose for which that chart was offered. I find by going into some of the conclusions that it has laid undue emphasis on the Government's theory and thereby has demeaned the defendant's position, not intentionally, but with the same force and effect and transgressed by expressing some view of the evidence as certainly having --

THE COURT: That was exactly from a limiting instruction as agreed upon.

MR. MC EVOY: The limiting instruction in the context of the trial I do not quarrel with, but I do quarrel with when you go to that extent without setting forth at that point the Court attempts to communicate certain concepts that there is more to it than that. Your Honor leaves out the cross-examination in effect. Having already stated my opposition in respect to the statement of the law with respect to conscious avoidance, wreckless disregard and high probability, I wish you to understand that I object to the charge in that respect most particularly in respect to page 21386 where the Court's recital of the basis from which the jury can find that the FHA does place an affirmative duty on some of the defendants in this case. Assuming for the purposes of argument that your Honor's statement of the law

is fair and accurate I think you have misspoken in speaking of the area as though there were three ways of proving knowledge. You speak of actual knowledge and the first way at page 21423 of high probability as the second way and at page 21425 of the third way and that is affirmative duty and wreckless disregard.

(continued next page.)

MR. MC EVOY: (Continuing.) To the extent that the cases in this Circuit have anything at all to say about the subject, they make it perfectly clear that conscious avoidance --

THE COURT: I do not say "The third way." I said "There is a third way."

MR. MC EVOY: I'll take your HOnor's language.

I submit, nonetheless, to the extent the Circuit has spoken of the issue, it has made it perfectly clear that conscious avoidance and reckless disregard are essentially the opposite sides of the same coin and are the same standard.

By having introduced that language, the Court has suggested to the jury that there are two divisible separate and distinct theories of liability, which can at a minimum introduce a significant amount of confusion, because if you parse the two concepts and you come to the conclusion that they are essentially the same, and yet you recollect the Court's charge, that they are two different ways, you've got a problem in terms of attempting to conform one to the other.

I say the jury as laymen are not in a position or capacity to do that.

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Further in respect of those additional portions of your Honor's charge referencing affirmative duties, I except to them for the failure to point out what the instructions are the mortgagee's handbook do point out, as the obligations in respect of investigation imposed upon the mortgagee.

To simply state "You may find the defendant to investigate and exercise proper credit judgment", without law, and say that this may be found from the FHA regulations and so on, I submit is unfair.

It is sufficient to invite the jury to such a finding and perhaps even to mandate the finding.

Further, the use of the word "insure," as Mr. Brodsky pointed out, has crept into your Honor's charge and creates a significant problem which I had previously made reference to.

Further, in respect of your Honor's charge, I find comment to both the false statement and bribery count instructions is the absence of any requirement in the Court's charge that the corporation have in effect a stake in the venture.

I conceive that to be part of the requirements under Section 2.

Further, I object to the failure to charge,

as we approached the latter portion of the charge, and particularly the bribery counts, a proper concept in respect of the corporate liability. For all that appears to the latter portions of your Honor's charge, your Honor simply is making reference to earlier statements as to corporate liability, and since Eastern is named in such a vast array of counts, I submit that more should have been done than was done.

Finally, I find no warrant whatsoever for the Court in the concluding remarks in its charge to give what I understood to be a modified Alen charge. I have never understood it to be appropriate for a Court to give an Alen charge before it delivers the case to the jury.

Those are my exceptions, respectfully noted.

THE COURT: Your exceptions are noted.

MR. MC EVOY: Thank you, your Honor.

THE COURT: Next, please.

MR. OBERMAIER: Initially, your Honor, I would ask the Court to issue a supplemental instruction to the jury to include Dun & Bradstreet's name among the names of the defendants against whom Mr. Fey's testimony cannot be considered. I think

the Court inadvertently, at least as reflected by the transcript, failed to include Dun & Bradstreet as one of the defendants against whom Mr. Fey's testimony could be considered.

I have reference to -- I think it's page 21209.

THE COURT: I know that they did hear that at the time of the giving of that instruction.

MR. OBERMAIER: I have no recollection of your Honor having said that, nor any recollection of your Honor having not said it.

THE COURT: All right. Then I will note your exception.

MR. OBERMAIER: The transcript -- I'll ask your Honor to issue a supplemental instruction.

THE COURT: I shall not.

MR. OBERMAIER: I would ask your Honor to issue a supplemental instruction to the jury to the effect that in determining the innocence or guilt of the defendants Dun & Bradstreet and Arthur Prescott, I instruct you that Dun & Bradstreet or Mr. Prescott had no responsibility for or any connection with any of the other documents in the FHA file.

The reason I do that is because I believe

that the jury could reasonably conclude from the charge as given that the credit report and the other documents were to be considered together.

Thus, the Court at one point said, "There are two categories of documents here, one the applications and the other the credit reports."

At another point the Court said "The Dun & Bradstreet prepares the credit report which in turn is sent over to Eastern and which in turn goes to the FHA."

At another point the Court said "The statute is directed to the applications."

At another point the Court read or discussed the mortgagee's handbook. That's exhibit 145.

There is no evidence and nobody contends that we were ever given a copy of or informed of the provisions of the mortgagee's handbook. The whole book deals with the obligations of the mortgagee.

At another point the Court said "The jury may consider all the papers necessary to make up the complete application."

The Court repeated in substance pretty much the same thing this morning, so that what I'd ask the Court to do is to issue a supplemental instruction informing the jury that the guilt or

innocence of Dun & Bradstreet is to stand or fall on the credit report alone, and that it has no responsibility for any connection with the documents in the FHA files.

THE COURT: Mr. DePetris, do you have anything to say about this alleged additional supplemental request?

MR. DE PETRIS: I don't think that -- I don't think the jury at this point in time thinks anything else, and that they must determine the guilt or innocence of Dun & Bradstreet based on the alleged false statement in the credit report.

I have no position one way or the other as to what the Court wants to do.

THE COURT: Well, I am not going to -- I will deny your request for the supplemental charge.

MR. OBERMAIER: I ask the Court --

THE COURT: I think I went into it very thoroughly and I was very careful and invited the attention of the jury tomake sure about those particular things being separate and distinct and they are to take those things into consideration and to now issue a supplemental request with regard to that, I might just as well start all over again.

No. I will deny your request, Mr. Obermaier.

MR. OBERMAIER: I ask the Court to issue a supplemental request which clearly informs the jury that they are to determine the guilt or innocence of Dun & Bradstreet only with respect to the bracketed portion of the report. The Court at various points in its charge told the jury that they are to consider the entire credit report and not just one little circled statement.

The Court at another point said "You must remember it is the entire report that is to be taken into consideration."

At yet another point it said "You must determine whether or not any statement as to the employment or income therefrom in the credit report was false. Any statement as to employment or income therefrom."

The Court at another point in its charge said "You must determine whether the proof establishes beyond a reasonable doubt that there is a false statement actually contained in each of the credit reports."

I'd ask the Court to issue a supplemental instruction to the jury, to tell the jury that they are to determine, with respect to each count, whether the bracketed portion is false. That and that alone

is to be the basis upon which the guilt or innocence of Dun & Bradstreet is to be determined.

In determining the falsity, they may consider the entire report, but the charge is focused on that specific bracketed portion.

As the charge now stands from the various portions that I have referred your Honor to, it is not clear that the jury is to determine the guilt of Dun & Bradstreet only on the basis of the bracketed portions, and so I'd ask the Court to issue a supplemental instruction with regard to that.

THE COURT: Your request for the supplemental is denied.

I think your enumeration of these phrases out of context from the whole of the statement made by the Court at that time distorts the picture.

I think I told them that I will zero in on what is alleged to be false statements by circling that. That is the alleged false statement.

Then they should take into consideration the whole report insofar as determining in their view whether or not the remarks sections did certain things, and I am not going to now repeat what I said

with regard to that.

So I will deny the request.

MR. OBERMAIER: The Court told the jury that Dun & Bradstreet is charged with a violation of Section 2. Putting aside the point that Mr. McEvoy made, that you cannot violate Section 2, Dun & Bradstreet in point of fact is not charged with a violation of Section 2.

The Court at various points in the charge said that Dun & Bradstreet and Arthur Prescott are charged with a violation of Section 2, and the Court's exhibit 25 includes as it pertains to Dun & Bradstreet Section 2.

As your Honor will recall, the government contends, finally, at whatever point it decided to tell us whether we were a principal or an aider and abettor, that Dun & Bradstreet was a principal. We are not charged with a violation of Section 2(a). Nor are we charged with a violation of Section 2(b).

To tell the jury that we are, when in point of fact we are not, seems to me to be the type of situation that requires some corrective action on the part of the Court.

(Continued next page.)

THE COURT: I think you are misunderstanding my charge with respect to them. In fact, insofar as the 2(b) part, I said particularly that there were two reports where the name of the reporter was not known and then in that instance the only thing they could do is prove a violation of 2(b) and not 2(a). And I think I was quite specific and in each of those counts, each of those 10 counts does charge both defendants with 1010 and 2.

MR. OBERMAIER: We are -- I can't --

THE COURT: There is no specification in each count as to which is charged with what or -- I think I covered all angels of it in my charge purposely.

MR. OBERMAIER: But by your Honor charging that Dun & Bradstreet is charged with a violation of Section 2, I think that is wrong.

I can't make --

THE COURT: In the context of my charge, I won't change it so you can take your exception.

MR. OBERMAIER: Your Honor said at page 21402, "The defendant Dun & Bradstreet and the defendant Arthur Prescott are also charged in each of these 10 substantive counts with a violation of Title 18, of the U. S. Code, Section 2."

THE COURT: Yes, that's right.

MR. OBERMAIER: I would think that that is clear that we are charged with the violation of Section 2 and I think that is inaccurate. So I'd ask the Court, in my view, to correct what it has said and to change Court's Exhibit 25 to accurately reflect the situation.

THE COURT: What is Court Exhibit 25?

MR. OBERMAIER: That is the thing other than the memorandum of Jury veridct. It is the sheet which collates --

THE COURT: Oh, I'm sorry.

MR. OBERMAIER: It is the sheet which collates all of the counts and the defendants.

THE COURT: All right.

MR. OBERMAIER: We raise the following objections to the Court's charge.

We adopt what Mr. McEvoy said with respect to the single conspiracy involving two objects. We object to the Court's charge because it fails to instruct the Jury who is alleged to be in each of the objects of the purported conspiracy.

The Court charges the Jury at page 21293 that the Jury may not consider any act or declaration which is not in furtherance of the same object and

the same conspiracy, as that of the actor or declarant And then it says: "You may not consider any aspects of the bribery as against Dun & Bradstreet or any aspects of the false statement as against Mr. Jankowitz and Mr. Cronin.

The charge does not set forth for the Jury and fails in that regard to tell the Jury who is in each aspect of the conspiracy, even if you accept the theory which we think is inaccurate, that there can be a single conspiracy with two objects.

The Jury at a minimum is required to be told who is in each object and what is a statement or act in furtherance of the conspiracy. Thus, just, for example, what is the Jury to do with the statements in the conversations of Mrs. Kapraki when she paid an [illegible] with respect to the foreclosure payments on [illegible] properties were involved? Is that an act in furtherance of false statement? Is that an act in furtherance of the bribery?

The Jury is left completely without any [illegible] in that regard and we object to that.

We object to the failure of the charge to accurately and clearly set forth the criteria by which the Jury is to determine membership in the conspiracy. That is to say, how does the Jury go about determining

whether a particular defendant is a member of, whichever object of the conspiracy someone deVines them to tell he's involved with.

The Jury is left without any criteria in determining whether Dun & Bradstreet is a member of the conspiracy. We object to the failure of the charge to accurately and clearly focus the Jury's attention on the scope of the agreement as alleged in the conspiracy. And the question is, if the Jury finds that the Government has failed to prove beyond a reasonable doubt that a defendant, by his or her own declarations and actions, did not become a part of that agreement. That is to say, how does the Jury go about determining whether any particular defendant is a member of whatever aspect of the conspiracy?

There are no criteria in your Honor's charge. Your Honor has not focused adequately on the scope of the alleged agreement, we respectfully submit. They were not told that the scope of the agreement is as set forth in the conspiracy count, namely, as it pertains to Dun & Bradstreet, that Eastern Service, Ortrud Kapinski, and a series of lawyers would all agree together to submit false statements to Dun & Bradstreet, and Dun & Bradstreet would thereafter

verify that information as true, even though it knew that the information was false, inaccurate and incomplete.

If they find that that was not the scope of the agreement, that someone in behalf of Dun & Bradstreet became a part of, they are to acquit.

Your Honor's charge does not, in our view, and we respectfully submit, accurately and clearly focus the Jury's attention on that critical issue.

We object to the failure of the charge to segregate the facts or at a minimum the contentions of the parties, so as to guide the Jury in reaching its decision as required by the following cases: U. S. against Kelly, 349, Fed. 2d, 720; U. S. versus Marchisio, M-a-r-c-h-i-s-i-o, 344 Fed. 2d, 653; U. S. versus Agueci, A-g-u-e-c-i, 310 Fed. 2d, 817; and U. S. versus Dardi, D-a-r-d-i, 330 Fed. 2d, 316. We object to the failure of the charge to identify the person through whom Dun & Bradstreet is alleged to have joined the conspiracy.

At no point in the charge does the Court tell the Jury who they are to focus on in determining who became a member of the conspiracy. The corporation's liability is only vicarious, as it comes from somebody else.

At page 21286, the Court tells the Jury that a corporation can act only through agents and employees, and while that is true, in the abstract at some point this Jury must be told who it is that acted in behalf of Dun & Bradstreet in joining this conspiracy.

The employees and the agents are not identified. They are not told who they are to focus in on. They are not even identified as a group. And I think that we object to the Court's charge failing to identify that particular individual.

We object to the Court's failure to charge the Jury that they are required to find an individual committed a crime before considering the issue of corporate liability.

We object to the Court's charge because it fails to tell the Jury that a person alleged to be a co-conspirator, while he need not know the identity, must know the existence of a group of individuals with whom he is alleged to conspire.

You don't have to know that it is Ortrud Kapraki by the name Ortrud Kapraki but from the scope of the agreement as set forth in the indictment, Dun & Bradstreet must have been required to join together with some broker. Could be anybody but at least whatever broker it was.

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THE COURT: I think in that particular regard, I was quite specific.

I said before they could find that a single conspiracy existed, they must find two or more of and from a certain group.

MR. OBERMAIER: Yes.

THE COURT: That wasn't Dun & Bradstreet.

MR. OBERMAIER: No, but I think the focus of --

THE COURT: Dun & Bradstreet, if it did, came in at a later time,

MR. OBERMAIER: But we must have known of the existence of a group of people identified as non-Eastern Service people. That is to say, people outside Eastern Service, who would submit to us false statements which we would verify as true.

The Court told the jury that you don't have to know the identity and that's true but it didn't go far enough when it said you must know of the existence of the people.

We object to the Court's failure to tell the jury that the agreement which forms the basis of the conspiracy charge has to be an agreement to submit false statements with the intent to influence the FHA.

There is not a word about that in the conspiracy aspect of the charge. At least as I recall it and

having read it in preparation for these remarks.

Nothing about that and the conspiracy as defined in the indictment requires that they be instructed on that. We except -- we raise -- we objec to the Court's charge on knowledge of the conspiracy count. That is, that one can become a member of a conspiracy which has as its core the submission of false statements, merely because one prepares credit reports and knows that the likelihood is great that false statements were prepared. Or the high probability of such statements.

The charge in that regard mixes up, respectfully, I submit, in our view, mixes up two concepts. Namely, the essential element of the agreement is confused with cases in which the Federal jurisdictional element is allowed to be inferred from the agreement.

Nothing in this case and there are no cases, we submit, that allow the gist of the agreement itself to be inferred from a likelihood, a great likelihood that false statements -- we object to the Court's -- in the Court's -- in defining to the jury the various aspects of the conspiracy, the Court -- the Court I think spoke declaratively, rather than simply saying that this is an allegation and we would ask the Court to issue supplemental instructions

3 to the jury, which would emphasize to the jury that the alleged objects of the conspiracy and the two -- the two aspects of it are simply allegations.

The Court's supplemental instruction in that regard could be patterned in part upon the language that is in our supplemental instruction No. 2, namely to say, "By so instructing you I didnot mean to imply in any way that a conspiracy existed, or that the defendants here became members of such conspiracy, if you find the two or more objects existed.

"It is for you to determine whether the Government has proved beyond a reasonable doubt that any conspiracy existed, with its objects and if so, who is shown by proof beyond a reasonable doubt to have been a member of the conspiracy."

The reference -- the part I have reference to in the Court's charge appears at page 21,282 to 283. We object to the Court's telling the jury that Count 11 can be the overt act, which they can find satisfies the conspiracy requirement.

As Mr. McEvoy has pointed out, in this case the overt act they find must be a crime. It cannot be as innocent as walking across the street, because of the way the indictment is drafted. Can't be any other way. Having dismissed Count 11 for whatever

reason, it is not either alleged to be a crime, it is not a crime, has not been approved -- proved, the Court must instruct the jury --

THE COURT: One defendant in that thing has not been dismissed. One defendant is still in that count. And severed.

MR. OBERMAIER: Well, severed, all right. It doesn't make any difference. I don't think the jury can find the overt act to have been committed even if that defendant is severed.

THE COURT: 211 overt acts here and I didn't mention that word here, 211. And they are not bound by them any way. They can go beyond that.

MR. OBERMAIER: They cannot, your Honor. They are required, according to the statute, at least as I read Section 371, to find one of the overt acts charged in the indictment.

THE COURT: They don't have to allege anything.

MR. OBERMAIER: They do.

I'm sorry, Judge. If an indictment --

THE COURT: Not as a substantive count.

MR. OBERMAIER: Not as a substantive count, no. But having chosen to do it that way, the jury must find one of the overt acts charged in the indictment.

THE COURT: Any one of the 211?

MR. SOVIERO: No.

MR. OBERMAIER: Any one of the -- I guess it's 64. There are 65 counts, minus one is 64.

THE COURT: All right, go ahead.

MR. OBERMAIER: But your Honor told them that they could consider Count 11 as an overt act and I don't think they can.

THE COURT: We differ.

MR. OBERMAIER: I don't believe there will be any serious objection to that but I don't speak for the Government. We except -- we object, rather, to the Court's instruction on aiding and abetting, as we already pointed out, Dun & Bradstreet is not charged as an aider and abettor, with respect to any of the counts that are submitted to the jury.

But having decided to charge on aiding and abetting, we except to the charge on 2A, that is, the charge that deals with Section 2A, because the charge does not accurately set forth the method by which the jury is to determine the issue of Dun & Bradstreet's guilt or innocence, with respect to whatever they are -- whatever they are charged with under Section 2. Thus, for example, the charge tells the jury to determine first whether Dun & Bradstreet committed

5a the offense through the combined acts of three people, or a group of three -- a group of people consisting of three catagories.

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Credit reporters, reporting managers and Arthur Prescott. And it then goes on to say that if you find that they did commit the offense, then you are to determine whether Arthur Prescott aided and abetted. That, if read, literally, that means Arthur Prescott must be found to have aided and abetted himself, which I don't think was the intention of what the Government wrote, but that's what it wrote, that's what the Court charged the jury, and we think that is inaccurate.

Second, the charge at page 21404 contains the following statement, and this is in connection with the aiding and abetting charge: "If you find that it did not . . ." -- that is if these people did not commit the offense -- ". . . then you must acquit Arthur Prescott. If you find that Dun & Bradstreet, through its employees, or, as I told you, through the others . . ." -- I don't know who those others are. I don't know what reference the Court had there. If it is not through employees, I don't know through whom Dun & Bradstreet's liability can attach except through employees, and I don't know what the Court had reference to, and I would ask the Court to at a minimum correct that.

The charge on aiding and abetting does not distinguish between the particular defendants involved. That is to say, at no point does the Court say who was involved in that particular thing. For example, at the bottom of page 21403 to 21404 the Court says to the jury in its charge: "You may not find any defendant guilty unless you find beyond a reasonable doubt that every element of the offense previously defined to you in my instructions was committed by some person or persons and that the defendant participated in its commission."

What defendant? Arthur Prescott? Dun & Bradstreet?

Prior to that, the Court says, "The guilt of a defendant may be established without proof that the accused personally did every act constituting the offense or offenses charged."

What defendant? Dun & Bradstreet couldn't be convicted without proof that every element of the offense was committed by somebody, and I don't think that we can be found guilty under that standard, and the Court has not told the jury who it is that their attention is to be focused upon in deciding that issue.

WE would ask the Court at a minimum to correct

that, particularly with respect to the defendant can be convicted without proof that every element of the offense was committed. Dun & Bradstreet cannot, does not fall in that category.

We object to the Court's charge on section 2B, first, because it is not applicable on the basis of the evidence here, and, second, because it contains, "in the ordinary course of business" that is to say instructions issued in the ordinary course of business relative to a false statement.

The charge fails to tie in Arthur Prescott's intent and knowledge, that is to say, he issued the false statements knowingly and that is to say that those false statements influenced the FHA.

I see that it is 1:15, your Honor. I would be prepared to continue --

THE COURT: Go right on.

MR. OBERMAIER: That is what I said, I would be prepared to continue.

THE COURT: Go right ahead, the jury has already had their lunch and they are waiting for me to give them the signal, and I am going to keep going until we get the signal, and I am marking time.

MR. OBERMAIER: We object to the Court's

failure to charge in its charge, to define the person through whom liability is thought to be attached on the substantive counts. Thus, the Court has not told the jury who they are to focus their attention on with respect to each substantive count, and with respect to each substantive count it differs.

I don't see how the jury can accurately go about its task without being at least told that with respect to a particular count, they are to consider whether the reporter or Mr. Prescott or the reporting manager, whoever it was at the time, committed a crime and then, having determined that a crime has been committed, whether corporate liability attaches.

The charge does not, as we have already pointed out with respect to the conspiracy count, nor with respect to the substantive count, the charge doesn't cover that. We obviously preserved our positions on the issues of corporate liability as we have been through the Court before on that.

I think Mr. McEvoy accurately set forth the standard in the Circuit with respect to whether objections have to be made to the charge considering the prior positions taken by the parties.

We object to the Court's charge on specific

intent, although the Court's instructions includes specific intent, the jury is never told in those portions of the charge that deal with Dun & Bradstreet what that specific intent is.

That is to say, the specific -- what is the specific intent required? Each of the crimes charged against Dun & Bradstreet is a specific intent; thus, at one point in the charge the Court refers back to its charge on specific intent, which had been given in connection with the bribery aspects of the charge.

Well, the specific intent required before the false statements is not the same as the specific intent required for the bribery. The specific intent required, the element of the crime which is required to be possessed, is the intent to influence, and that influence, that is, making the false statement with the intent to influence, must be with the bad purpose that the law provides.

There is nothing that ties the specific intent section of the Court's charge to any element of the crime, and we believe that that is something which the Court can now correct and should correct.

In that connection, the Court charges in specific intent, without tying it into anything, but putting that aside, the Court makes the following

statements which I must confess I do not understand, but that should not be the standard of the law, whether I understand it or not, but I don't believe the jury can understand it.

The Court says at page 21408 to 409: "In determining the issue of intent, also, you are entitled to consider any statements made or acts done, or omitted by the accused and anyone involved in those conversations that had to do with those particular facts and circumstances, as you have heard evidence of and as you will remember, in all of the facts and the circumstances of the case which aid you in determining whether -- aid you in determination of a particular defendant's state of mind, and you can take into account similar acts or transactions if any were produced by the evidence which you may remember or your own."

Now, I don't know whether that is what the Court intended to say, but the minutes reflect that. I think that is a concept which is extraordinarily difficult for the jury to understand.

I would point out that in connection with specific intent, nearly telling the jury in the abstract what specific intent is, without tying it to any

particular element of the crime, has been held a deficiency in a charge in United States versus Gargulio, 310 Fed. 2nd, 249.

We think that is the type of thing that can be corrected. We object to the Court's failure to charge the theories of the defendants which are supported by the evidence.

Now, in the case of Smith versus the United States, 230 Fed. 2nd, 935, the Court said there, and I think it is universally accepted, "That it is elementary law that a defendant in a criminal case is entitled to have presented instructions relating to a theory of defense for which there is any foundation in the evidence."

Now, Dun & Bradstreet introduced evidence concerning the meaning of the words "reportedly" and "subject stated" and to their use and how the credit report is written and how it is to be read.

With respect to the word "reportedly" and "subject stated" and its use, there is no contradictory evidence, yet the Court has chosen to charge as the Government requested, which eliminates that defense and substitutes for it something which I think there is no evidence in the record.

Now, the issue of the word "reportedly and subject stated" and the meaning ascribed by the party is something which is of some substance in this case.

We also introduced evidence that the report must be read as a whole.

Again, the Court charged something which was different than that. I don't say the Court has to accept what a defense man puts in in the way of evidence, but the defendant is entitled at a minimum to have that issue accurately presented to the jury.

Here I don't think the charge does that. Your Honor can marshal the contention of the parties, whether the Government's contention that "reportedly" and "subject stated" don't fulfill the affirmative obligation, or that thejury can find that, or the defendants contention that "reportedly" and "subject stated" is the way they have always done it.

But I think at a minimum we are entitled to have the theory of the defense set forth to the jury, and the charge, as it presently exists, does not do that.

We take objection to the Court's charge on what I call and what I think the cases call imputed knowledge. We object to high probability and the

other various formulations.

And as a whole, we believe that the charge read as a whole, taken as a whole, does not accurately and clearly convey the concept to the jury that knowledge of this type is one that arises from attempting to avoid guilty or criminal knowledge that is set forth in Judge Friendly's opinion in Jacobs and in the other cases we have previously cited.

We object to the Court's charge on affirmative duty -- on any aspect of the charge of affirmative duty, but having chosen to charge on affirmative duty, the Court in its charge, and you again adopted verbatim what the Government submitted and charged that the defendant has a duty to verify the information in its credit reports, and I don't believe that -- I don't believe that is the issue that has been put to thejury.

Moreover, the charge on affirmative duty does not particularize the existence of the duty and ties it into the statements which are alleged to be false. Nor does the charge require the jury to find that Dun & Bradstreet is aware of the duty, as it is required to do, to comport with due process.

The Court read from Exhibit 145, and there is

no evidence that Dun & Bradstreet was ever given the manual, no statutory or regulation defining the duty. The charge does not -- and we object to this -- clearly and definitively define the consequences if the jury finds that no such duty existed. What are they supposed to do at that point? Suppose they conclude from whatever evidence your Honor has adduced -- has referred to and all the other evidence in the case, that no affirmative duty existed? The charge gives them no guidance with respect to what they are to do in that regard. I think that can be corrected.

We object to the charge as a whole because read as a whole it could leave the jury to conclude that there is a standard of wrecklessness available to them, without that wording having been defined in the charge; not a word as to what the jury is to conclude.

(continued next page.)

It could conclude that wrecklessness is identical to negligence and find a conviction here. We don't believe that that accurately sets forth the state of the law.

We object to the Court's failing to instruct the jury of the testimony that it was admitted for a limited purpose.

I mentioned already that I thought that Mr. Fey's testimony, the Court inadvertently forgot the name of Dun & Bradstreet.

The Court has at no point told the jury that Mr. Goodwin's testimony in its entirety may not be considered by them in therefore determining the guilt or innocence, nor the testimony of Rose Cohen nor that of Martin Hardiman or Milton Frances. As I think it indicated during the course of the trial itself, the Court does not tell the jury the limited nature of some of the testimony admitted during Mrs. Kapraki's testimony.

I think the Court is, in our view, duty bound to tell the jury that testimony which has been admitted for a limited purpose, thus, for example, Mrs. Kapraki's testimony concerning a conversation about her proposed testimony at the Division of

Licensing in March of 1970 has no relationship to any issue involving many of the defendants here, or her conversations with Pat Cioffi, all admitted for a limited purpose and there is no mention in the charge of those.

We adopt what Mr. McEvoy said with respect to the Court's instructions on interested witnesses, that is to say, a person who came in and testified for a defendant is somehow an interested witness. I don't think that is true of the locksmith, nor is it true of Leslie Sparrow, who happened to be an employer who was called.

I don't see why their testimony should be judged any differently than that of Judge McKran.

Mr. DePetris had asked me to make clear the point at which I have reference in connection with the defendant's testimony. It was all quoted by Mr. McEvoy, and I am reading now from 21227. I am only reading with respect to Dun & Bradstreet.

There is also a portion of the charge that deals with the EAstern Service and Mr. Cronin. It says, "Dun & Bradstreet, Inc. testified through a number of witnesses, Harold Redding, Hamilton Mitchell, etc. The last of those witnesses is Leslie Sparrow."

Then the Court says, "Now, they are competent witnesses. Their testimony should not be disbelieved merely because they are defendants who are testifying on behalf of named defendants: however, in weighing their testimony, you may consider the fact that these defendants have a vital interest in the outcome of the trial."

A fair reading of that means that Mr. Sparrow's testimony should be judged by a standard different than that of any other witness because he testified for a defendant, or that of, let's say, Mr. Maxwell Leman, the locksmith, or the rabbi, Mordecai Waxman. I don't think that accurately reflects the status of the law and I think that that should be corrected and I join Mr. McEvoy in his reference to the quotation from the charge that deals with preponderates beyond a reasonable doubt. I must confess I do not understand what that means, and that should not be the standard, clearly.

But I think that the jury could have reasonable problems with that.

I except to the Court's charge as given on reasonable doubt because it doesn't tell the jury that a reasonable doubt may arise from the lack of

evidence, that is, it is a doubt founded on reason arising from evidence or from the lack of evidence. And I think that to the best of my knowledge that has traditionally been included in charges on reasonable doubt and I would ask the Court to correct that situation.

I would object, your Honor, to the Court's charge to the extent that it told the jury that the purpose of the statute is that people can rely upon the applications as submitted. It raises the problem of reliance which we have discussed with the Court before and we except to that.

I would also object to the Court's failure as we have requested in both the initial and the supplemental requests to charge and refer the Court to the lengthly discussions we had at that time, at the time the Court ruled on the request to charge, with the hope that the Court is aware of the various positions, and as the Circuit Court has said, there is no need to rehash those things there where it appears clear that efforts at further persuasion are futile.

And so I would adopt all those arguments that we made here so that the Court at least understands

precisely the position we have adopted here.

MR. SOVIERO: I join in that, if it please the Court, in behalf of Defendant Rose Shorenstein.

THE COURT: In those portions that apply to Mrs. Bernstein.

MR. SOVIERO: Yes, your Honor.

MR. MC EVOY: If the Court please, Eastern Service joins in these exceptions addressed to the conspiracy count, the failure to marshal the evidence, the aiding and abetting under Sections 2A and 2B, the specific intent instruction, the affirmative duty instructions to the extent that Mr. Obermaier's argument was broader than the argument that I addressed to the transcript; the point that wreckless-ness has not been defined in the Court's charge to the jury, also, the failure to find that all of the testimony that has been offered for a limited purpose and finally the Court with respect to reasonable doubt, to define that a reasonable doubt may arise from the failure of or the lack of evidence.

MR. BRODSKY: I join in that, if your Honor pleases.

THE COURT. Mr. Brodsky joins.

Mr. Martine, I guess you are next.

MR. WALL: I did that for the sake of convenience. I believe Mr. Martine is next, but I am willing to take on my exceptions now.

MR. MARTINE: I don't mind, your Honor. Whatever the Court prefers.

Your Honor, initially I would like to join in Mr. Obermaier's objection with regard to specific intent, the conspiracy objections, the contentions of the party and lack of evidence in helping to establish a reasonable doubt.

Your Honor, initially I now take exception to that portion of the Court's charge where in effect the Court said -- I haven't got the exact transcript -- that the indictment charges a single conspiracy having two objects or goals, the first object is a fraudulent application and the second object of the conspiracy was the bribery of FHA officials with intent to affect their official actions.

I would request most respectfully that the Court give a supplemental charge which says that the jury cannot find the defendant Herbert Cronin guilty of any bribery aspect or object of the conspiracy as there is no evidence in this trial connecting Mr. Cronin with any bribery or illegal acceptance of

money.

Shall I go through the entire list, your Honor?

THE COURT: Yes. Your exception to that is noted.

MR. MARTINE: Your Honor, I would also --

THE COURT: That is the one you started to talk about the other day.

MR. MARTINE: Yes. I would also ask the Court, your Honor, to include the name of Herbert Cronin in that portion of the Court's charge wherein it said in effect that there was no evidence connecting Dun & Bradstreet or Arthur Prescott with any bribery aspect of the conspiracy.

I would also ask the Court to give a supplemental charge to include Herbert K. Cronin's name in that portion of the Court's charge where in effect it said that the jury cannot consider statements on the bribery aspect of the conspiracy against Melvin Cardona, Dun & Bradstreet and Arthur Prescott.

THE COURT: Your request for a supplemental charge is denied.

MR. MARTINE: I would like at this time, your Honor, to object to and take exception to that portion of the Court's charge wherein it said that Section 1010

included the real property which is the subject of the mortgage.

THE COURT: Noted.

MR. MARTINE: I would request that the Court charge at this time that the use of the CUP, chief underwriter's prerogative, cannot be considered as over valuing security under Section 1010 as its use is not based on valuation techniques and its very use in and of its nature would result in a sense of over valuation of property so as not to come within the purview of the parameters of Section 1010.

I would ask the Court to --

THE COURT: That request is denied. I think I covered that. I not only went into that but I also read the very section which has to do with the CUP.

MR. MARTINE: Yes, the Court did, your Honor.

I would request the Court to charge or issue a supplemental charge that Herbert K. Cronin is himself an expert, and I mention that for --

THE COURT: Is himself a what?

MR. MARTINE: An expert with regard to this.

The Court, in going into the expert testimony portion of its charge, specifically alluded to Milton Francis and said in effect that if the jury

were to find based on his experience, background and other factors, that Milton Francis, if they believed his opinion they could find that the property was over valued.

Mr. Cronin, I most respectfully state, is an expert at least equal to Mr. Francis and I think, and I would request the Court mention him in that area and also add that in Mr. Cronin's opinion the use of the prerogative was not improper, the jury could find that, and that as a result, if they did believe that, based on his training, experience and testimony, then they must find that the property was not overvalued.

I mention that because, your Honor, as I say, the Court specifically alluded to Milton Francis and I think in fairness --

THE COURT: I used him as one example, yes, but then I recall very specifically, "other witnesses were also asked to give their opinion on certain questions raised," and your defendant was a witness.

MR. MARTINE: I understand, your Honor.

THE COURT: And he was asked the same as was Mr. Fey. He was asked a lot of questions and opinion as to his opinion.

MR. MARTINE: That is true, your Honor. I have

no quarrel with that. I am just saying --

THE COURT: That is why I lumped them in and said other witnesses were also asked.

MR. MARTINE: I request that again because of the fact that Mr. Francis was specifically mentioned in an area that I consider to be critical in the defense of my client's case and I request that the Court give a supplemental charge as to that aspect, your Honor.

THE COURT: That is denied.

MR. MARTINE: That's all, your Honor.

I join in the other aspects with regard to Mr. Obermaier.

THE COURT: Mr Wall?

MR. WALL: I think Mr. Rosenkranz is next, Judge.

THE COURT: I'm sorry.

Mr. Rosenkranz.

MR. ROSENKRANZ: Your Honor, at this time I would join in all previous exceptions and requests made by other counsel that applied to Mrs. Behar.

Specifically as to the memorandum of juris verdict which your Honor intends to submit to the jury, I would ask that the date in Count 9 be changed to reflect the bill of particulars which the Govern-

ment has introduced and which Mr. McEvoy discussed, the date --

THE COURT: I just have looked at that so many times and I can't follow your thinking about the dates.

The bill of particulars uses both dates and makes it quite specific as to when -- in referring to Mr. Cardona, when he left the employ and the period he was involved there.

MR. ROSENKRANZ: I am not talking about when Mr. Cardona left the employ. I am talking about the false statement submitted in January of 1969, the memorandum should so reflect.

THE COURT: If that is a request, that is denied.

MR. ROSENKRANZ: Yes. I would respectfully except to your Honor's emphasis on the 2900's during your Honor's charge.

I think to place the matter in its proper perspective, although Mr. Obermaier and the Government did both agree to have the factual data reports submitted to the jury, the 2900's were fervently objected to by both Mr. McEvoy, for Eastern Service Corporation, and myself for Mrs. Behar.

I think that for your Honor to have read the

name of Florence Behar as the Assistant Vice President, 18 times in regard to each one of those 2900's is putting too much emphasis on the fact that she signed what is alleged to have been a false statement.

THE COURT: It was one of the alleged false statements and I don't know how many times out of the 18, maybe seven out of the 18, said the false statement was in 8A and 8B. They are repetitious.

MR. ROSENKRANZ: By reading the name Florence Behar, Assistant Vice President, each and every time of the 18 times I think was unnecessary and I think if you compare that with your Honor's treatment of the dates and the names of some of the different counts when your Honor said, well, there will be different names and different dates, in this case I think if your Honor had simply said at the very beginning that Mrs. Behar signed each one of the 18 2900's that would have been prejudicial at that, but I think it would have been less prejudicial than in its present state, and I respectfully except to that.

(continued next page.)

MR. ROSENKRANZ: (Continuing) In discussing the false statement counts, your Honor stated that in order to convict Harry Bernstein of committing the false statement counts, the Jury must first be satisfied beyond a reasonable doubt that Mrs. Behar is guilty. And I don't think that is a proper statement, in view of the law and the facts of this case.

I think that the Jury should consider each of the defendants separately and that they can -- both acquit or convict one without necessarily convicting or acquitting the other.

And I would respectfully except to that treatment of the false statement counts which your Honor said this morning, I can't refer you to the page, because there is no transcript.

In discussing the briber counts, your Honor mentioned the names Harry Bernstein, Rose Bernstein, Florence Behar and Eastern Services, as being involved in the bribery counts and then stated the four names again and said they are also charged with aiding and abetting.

In various bribery counts, again, Mrs. Behar is not named as a principal in any of the bribery counts. She is always mentioned, solely as an aider and abettor.

I would ask your Honor to make a supplemental charge indicating that fact. That she's named only as an aider and abettor.

In view of your Honor's emphasis on the 2900s, I would ask your Honor to state to the jury that [illegible] that was entered into between the [illegible] and Mrs. Kahn concerning [illegible] as to what she said [illegible] concerning the [illegible] statements, specifically that she lied to [illegible] that in view of your emphasis on the 2900s, that that would be a fair marshalling of the other side of the coin, so to speak.

[illegible]: I don't marshal when I do that.

[illegible]: Well, I would ask your Honor to give the other side of the coin.

[illegible]: Okay.

[illegible]: I have nothing further.

[illegible] you.

[illegible]: Okay.

Mr. [illegible]

[illegible]: Your Honor, the defendant Prescott excepts to your Honor's failure to charge as requested in written form some months ago, to the extent that you have no charged them. He joins in Mr. Obermaier's exceptions insofar as they may be applicable to him.

3 And specifically, I except to that portion of your Honor's charge in which you indicate to the Jury that proof of the existence of a motive to commit the crime should be considered by the Jury but that the absence of a motive may be considered by the Jury on the grounds that the two types of proof are equal and should not be differentiated in the Jury's mind.

THE COURT: I'd like to refer to that page because I think I copied exactly word for word your requests.

MR. WALL: I heard a "should" for one and a "may" for the other.

THE COURT: I would challenge the record insofar as that is concerned because I copies yours word for word.

MR. WALL: I am not taking it from the record. It is from my recollection of what was said.

THE COURT: If I can point my finger at my own charge on that, you will find that I have your page, from your requests, cut out and put in, into that place.

MR. WALL: Mr. De Petris informs me, your Honor, that his recollection is in accord with mind on that subject and that he has no objection to that

matter being straightened out.

THE COURT: Well, I won't, because I think my charge is clarified. I don't need any help from Mr. DePetris in that regard.

MR. WALL: I distinctly heard your Honor say "should" and "may."

THE COURT: All right.

MR. WALL: In any event --

THE COURT: "Should" or "may"?

MR. WALL: The defendant respectfully excepts to that portion of your Honor's charge where you state that a person cannot be guilty of a conspiracy merely because he performs acts which benefited, if he has no knowledge of the existence of the conspiracy.

My exception is based on the grounds that even with the knowledge of the existence of a conspiracy, and even with the performance of acts which benefited, that does not necessarily make a person a conspirator and the Jury may misunderstand that.

The defendant respectfuly excepts to that portion of your Honor's charge where you used the concepts of continued inference, conscious avoidance and high probability with respect to the conspiracy count, on the grounds that those concepts do not apply to a conspiracy, which requires actual knowledge that a

defendant's conduct is in fact illegal. And I would ask your Honor to charge the Jury accordingly.

I respectfully except to that portion of your Honor's charge which would permit the Jury to find guilty on the conspiracy count by finding the commission of an overt act which is not alleged in the indictment.

I respectfully except to that portion of your Honor's charge and there are numerous ones, I believe, where you indicated mainly in defining specific intent, that specific intent can be found in knowingly failing to perform an act which the law requires on the grounds that that is not applicable to Mr. Prescott and there is a danger that the Jury will confuse that concept of knowingly failing to perform and act which the law requires with the so-called affirmative duty and therefore convict the defendant upon a standard which was not known to him at the time and therefore in effect violate the ex post facto provision of the United States Constitution.

I except to that portion of your Honor's charge in which you tell the Jury to consider whether any statements were omitted from the remarks Column on the given reports, on the grounds that there is

6 no proof in this record whatsoever and no proof from which the Jury could infer that anything was omitted from the particular reports involved in this case, and I ask your Honor to instruct the Jury that -- and without taking away from my position that that would be an improper concept, in any event, but at the very least I ask your Honor to instruct the Jury that in determining whether any statements were omitted from the remarks column, you are talking about the remarks section in that particular report which the Jury is then considering.

The defendant respectfully excepts to that portion of your Honor's charge wherein, at page 21375, I am told, you alluded to a practice of putting down what the applicant said without attempting to verify.

The defendant excepts to that portion of your Honor's charge wherein you state that the Government is relying on circumstantial evidence to show that the defendant Prescott knew the statements were false, on the grounds that there is no testimony in this record that he even knew the statements were made or the contents of those statements and I would request that your Honor charge the Jury that they must also find, with respect to the defendant Prescott, that he knew the nature of the statements

7 being made in each particular report, in determining his guilt or innocence, concerning that report.

I also -- and, finally, I shall ask your Honor to tell the jury that there is no testimony that he ever knew the contents of those specific reports because that is my recollection of the testimony.

The facts all indicate that they never discussed the reports with him and never showed those reports to him.

With respect to your Honor's discussion of whether or not Dun & Bradstreet or Arthur Prescott and Wiley were liable to the firm, the defendant Prescott respectfully objects to that portion of your Honor's charge where you refer to Title 12 [illegible], to the Mortgagee Handbook, to Section 123, to the provision that a balance sheet had to be submitted to the FHA, and to Section 121, on the grounds that the manual was not given to Dun & Bradstreet or to Mr. Prescott.

I believe there is testimony by a Government witness that it was not the practice to send a manual or the Mortgagee's Handbook to credit reporting agencies and that consequently, with respect to that particular form, Mr. Prescott is being judged on statements which the record showswere never shown to him and

7a therefore, upon which he cannot have his conduct judged.

THE COURT: How about Dun & Bradstreet's instructions to its reporters which followed verbatim the rejects of the FHA? Isn't that to be considered.

fols. (Continued on next page.)

MR. WALL: I don't believe so, your Honor. Because there is no charge here of failing to live up to the Dun & Bradstreet instructions. We are talking about the manual and certain sections of law and there is no testimony that those matters were ever brought home to Mr. Prescott.

I except to that portion of your Honor's charge in which you indicated that if there was a duty on certain defendants, then the concept of recklessness would apply to Dun & Bradstreet and to Arthur Prescott.

I except to that portion of your Honor's charge in which you indicated that the action had to be taken with intent to influence the FHA, although the ground of my exception is--although that is within the terms of the statute the indictment specifically states that the action was taken in order to influence the FHA to grant mortgage insurance, which is a more specific charge. And I except to that portion of your Honor's charge in which you told the jury that if the jury found that the defendant did not knowingly make a false statement, the jury should acquit, on the grounds that that in effect shifted the burden of proof and required a positive finding of that on the part of the jury.

And finally, your Honor, I except to your Honor's failure to define for this jury precisely what you mean by the term "reckless," inthe term "reckless disregard," and again I join all of Mr. Obermaier's requests and exceptions.

THE COURT: Okay.

Mr. Klein?

MR. M. KLEIN: Yes, your Honor.

THE COURT: Your exceptions are noted.

MR. M. KLEIN: Firstly, I join, your Honor, in the remarks, objections and exceptions of all preceding counsel, as they are applicable to the defendant Melvin Cardona.

In addition, I respectfully except to that portion of your Honor's charge wherein you said in words or substance, that if you find the presumption of innocence has been overcome beyond a reasonable doubt, then you must find defendant guilty.

I object and I ask your Honor to charge the opposite, that is, if you find the presumption of innocence has not been overcome beyond a reasonable doubt, you must find the defendant not guilty.

THE COURT: That request is denied.

MR. M. KLEIN: Further, I take exception, join the portion of your Honor's charge where in you named

witnesses, all the witnesses, testifying in this case, and mentioned stipulations that were entered into during the course of this trial and that you failed to instruct the jury as to the stipulation entered between myself and the Government, with regard to the testimony of Jose Abad before the Department of Licensing and Services hearing.

THE COURT: I didn't enumerate the stipulations.

MR. M. KLEIN: You didn't mention that stipulation in any way, your Honor.

THE COURT: Not that one, no. But nor did I mention all of them.

MR. M. KLEIN: I don't know about all. You mentioned many stipulations, your Honor.

Thirdly, I respectfully except to your Honor's remarks concerning reckless disregard and continued indifference, in behalf of Melvin Cardona, who the Government has always contended had actual knowledge and who the Government contends or as to the Government contends those elements of reckless disregard and consious avoidance did not apply.

THE COURT: If you recall when I was discussing knowledge, that's the first thing I said. The Government may prove by actual knowledge.

MR. M. KLEIN: Yes, sir. I'm saying the elements

4 of.

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THE COURT: I am talking about knowledge together --

MR. M. KLEIN: Yes, sir.

What I am trying to say and perhaps not very clearly, is that the elements of reckless disregard or conscious avoidance do not in any way apply to the defendant Cardona.

I also take exception to your Honor's grouping defendant Melvin Cardona with four other defendants, just prior to discussing those four other defendants, who are charged with bribery counts and that defendant Melvin Cardona is not charged in any bribery count and this may very well mislead the jury into believing through that grouping that he is.

Thank you very much, your Honor.

THE COURT: Okay.

Now, Mr. Lashley?

Your exceptions are noted, Mr. Klein.

MR. M. KLEIN: Thank you.

MR. LASHLEY: Your Honor, firstly, I specifically except to the omission of counts -- charges 4 and 5 in my requests to charge which were submitted to you earlier. And I also respectfully except to the failure of your Honor to define in its charge specific intent,

which is required by Jankowitz to be convicted under Section 201C-1 or the lesser included offense.

You did mention specific intent is required but you did not define it as to Jankowitz, in your charge. I also respectfully except to the portion of the charge this morning in which you were discussing 201 B-1 and the lesser included offense, in which you grouped together Goodwin and Jankowitz and defendants Harry Bernstein, Rose Bernstein, Eastern Service Corporation and Florence Behar in discussing that bribes were being paid by these defendants or in these defendants' aiding and abetting payment of bribes to Goodwin and Jankowitz, without specifically mentioning that Jankowitz is only charged in two counts and without specifically mentioning that defendant Jankowitz is not charged in Count 2, aiding and abetting Count.

Whereas, the other defendants are each charged in at least ten to 18 counts in the indictment.

In addition, your Honor, I would request that you grant an additional request, supplemental charge, to the effect that unless the jury finds beyond a reasonable doubt that Kapraki was telling the truth about Jankowitz receiving money from her, then

6 you must acquit the defendant Jankowitz and that if you so find, then I charge you that you cannot consider any lesser included offense.

THE COURT: I will refuse to so charge. I think my charge with respect to that amply covers that.

MR. SOVIERO: Your Honor --

THE COURT: The Government, please.

MR. SOVIERO: It is my impression, if your Honor please,that we were taking exceptions first and not requests. I have two small requests but if you want --

THE COURT: Take them now.

MR. SOVIERO: All right.

THE COURT: I think you were doing both when you were up.

MR. SOVIERO: No, if your Honor please. I just took exception and I believe Mr. Brodsky before me only took exception. I didn't hear him make any requests to charge. I respectfully request, your Honor --

THE COURT: Go through two rounds?

MR. SOVIERO: No. It's been my training that judges take exceptions first and then requests, if it please the Court.

THE COURT: Okay.

MR. SOVIERO: With respect to your Honor's charge concerning the accomplice testimony, I respectfully submit to your Honor that while your Honor properly charged the jury concerning the weight to be given accomplice testimony, you failed in all respects to identify or define for the jury what an accomplice is and I submit to your Honor that I respectfully request that your Honor charge the jury that a witness can be considered an accomplice when he is named in the indictment or by his own testimony gives rise to a set of facts whereby he allegedly engages in a course of criminal conduct with one or more of the defendants.

THE COURT: You didn't hear my charge with respect to the definition of an accomplice.

MR. SOVIERO: I probably missed that part of it, if it please the Court.

THE COURT: So your request, therefore, is denied.

MR. SOVIERO: I respectfully request, your Honor, to submit to the jury the question of whether or not the Government by its proof has proven two separate and distinct conspiracies as a question of fact for the jury to decide.

THE COURT: That is denied.

Okay. Now, the Government. Mr. DePetris.

MR. DE PETRIS: Your Honor, I have no comments to make with respect to Mr. Brodsky or Mr. Soviero's--

THE COURT: Anyone of them. Because they have the right to note their exceptions.

MR. DE PETRIS: Yes.

THE COURT: On the requests that they made, I didn't grant any. If I was going to grant them or if I had any -- wanted any argument from you, I would have asked for it.

MR. DE PETRIS: Mr. McEvoy referred to --

MR. SOVIERO: If your Honor please, I don't understand.

THE COURT: I do. Let him talk. I'll find out what he wants.

MR. DE PETRIS: Mr. McEvoy raised the point which I would have no objection to,your Honor, and would request that your Honor --

MR. SOVIERO: It's already been denied, your Honor, hasn't it?

THE COURT: Did I ask for your comments?

MR. SOVIERO: No. I'm sorry.

MR. DE PETRIS: Shall I start again, your Honor?

THE COURT: Yes.

MR. SOVIERO: Start again.

THE COURT: Please.

MR. DEPETRIS: Mr. McEvoy referred to the point and I believe one of the other attorneys did, too, about the question of overt acts, where there are two objects of the conspiracy.

We would agree with him on that point and ask the Court to tell the jury that -- in order to find a defendant guilty of a conspiracy, there has to be an overt act relating to that object of the conspiracy.

THE COURT: To that branch of the conspiracy?

(continued next page.)

MR. De PETRIS: To that object of the conspiracy, the bribery or false statement. We would agree with this and ask that the Court charge that to the jury, as to the question of the affirmative duty Mister -- and this is something else that we would agree with Mr. McEvoy, that something should be said to the jury on. At one point your Honor defined the duty as it relates to Eastern Service Corporation as one to exercise -- to investigate and exercise proper credit judgment.

Then when it came to Florence Behar and Harry Bernstein, it referred to affirmative duty to insure the statements were true. And if your Honor recalls, we discussed this before and when they objected to the use of the word "insure," the Government agreed that that -- that would be withdrawn from our request to charge and that your Honor used the phrase as it relates to Eastern Service Corporation, Harry Bernstein and Florence Behar, to investigate and exercise proper credit judgment. That is the duty, and not use the word, "insure."

So we would ask that your Honor clarify that.

THE COURT: You had better find it in the record and give it to me.

MR. BRODSKY: I read it to you, your Honor.

THE COURT: I know.

MR. De PETRIS: Page 21,425-26.

THE COURT: 425?

MR. De PETRIS: It was in that -- on the bottom of page 21,425 your Honor defined the duty as one on the mortgagee, to investigate and exercise proper credit judgment. We agree with that.

Then when it came to the question of Harry Bernstein and Florence Behar, this is the bottom of page 21,426, the Court said, "You may find that any person in such a position had an affirmative duty to insure statements made in the application were true." That was the form in our original request to charge. However, in light of the objections by defense counsel, we agreed to change that to same as with Eastern Service Corporation; that is, a duty to investigate and exercise proper credit judgment.

While we're on the question of -- may I have a moment with Mr. Obermaier?

THE COURT: What?

MR. De PETRIS: May I have a moment to speak with Mr. Obermaier?

THE COURT: Yes.

MR. De PETRIS: I am not sure if Mr. Obermaier specifically referred to this, your Honor, but he

raised the question of the duty as to Dun & Bradstreet, and the Court in -- in discussing the duty as it relates to Dun & Bradstreet and Mr. Prescott did not define the duty insofar as it concerns Dun & Bradstreet, and when it came to the defendant Prescott, it referred to the duty as being a duty to verify.

The Government would request that your Honor clarify that and as it relates to both Dun & Bradstreet and Prescott, the duty is one to attempt to verify, rather than --

THE COURT: Find the page.

MR. De PETRIS: Do you have that page, Mr. Obermaier?

MR. OBERMAIER: 21,387.

MR. MARTINE: 21,387, your Honor.

THE COURT: 21,387, line 16?

MR. De PETRIS: Yes, your Honor.

THE COURT: Had a duty to verify?

MR. De PETRIS: Yes, your Honor. As to both Dun & Bradstreet and Mr. Prescott, a duty to attempt to verify. That's what the Government would request.

THE COURT: Maybe I am not on the same line. That any person? You want that changed?

MR. De PETRIS: No, your Honor.

"You may find that any person in such a position

had a duty to attempt to verify."

THE COURT: Then I am not on the same wavelength.

MR. De PETRIS: Line 17.

THE COURT: Oh. "Position, had a duty"?

MR. De PETRIS: "...to attempt to verify."

MR. WALL: Will your Honor note that Mr. Prescott excepts to that particular request that Mister -- I am excepting to any giving to the jury of any claim that there was any duty at all, and specifically with respect to this amendment that is about to be made, I take it. It's conceivable that the jury might think he had a duty personally to verify.

THE COURT: O.K.

MR. De PETRIS: And that duty to attempt to verify applies to Mr. Prescott and Dun & Bradstreet. They may find that. I mean --

THE COURT: I will leave my charge as it is then, therefore, with respect to that. I will not change it.

MR. De PETRIS: Turning to the question of Count 11, which was dismissed, the Government would have no objection and would agree that the jury is not to consider that as an overt act. However -- and that the jury has to find one of the overt acts charged in

5 the indictment.

However, it would ask the Court to charge that the evidence as to Count 11 may be considered as it relates to the state of mind of the persons involved. In other words, under your Honor's charge, your Honor told the jury that it was dismissed. They may get --

THE COURT: Substantive count?

MR. De PETRIS: Yes. They may get the mistaken idea they have to dismiss the evidence as it relates to the state of mind of the defendants, and if your Honor will recall, that was one of the cases where it was specifically brought to the attention of Mister -- of the reporters and others in the office. I believe Mr.Prescott also. There was a definite false statement in.

The count was dismissed but we would ask your Honor to charge the jury, to tell the jury that although the count was dismissed, the evidence as it relates to the count may be considered insofar as the state of mind of the defendants --

THE COURT: Not as an overt act?

MR. De PETRIS: No. Just the state of mind.

THE COURT: Well, if you want to compound confusion, that is the way to do it.

MR. De PETRIS: No, your Honor. At that point

6 in time there were substantive counts after that point in time and now, as you recall, Mr. Bashian's summation where there was a building up of things that were putting Dun & Bradstreet on notice, there were substantive counts after that point in time and those -- that evidence, those events, do relate to Mr. Prescott's state of mind after that time.

If that's not made clear to the jury, I think that your Honor having told them that it was dismissed, they might assume they cannot consider any of the evidence.

THE COURT: I did say that they could consider it as an overt act.

MR. McEVOY: Judge, if Mr. De Petris will suffer interruption, so that the record should be clear, I did not request a charge that an overt act must be found as to each of the two objects. My position is just the opposite, that the Court is incorrect with the statement of law and I cannot be held to a request to charge which would conform to a statement of law which I do not accept.

Similarly, I did not request a correction or change in the charge in respect of "insuring," the use of the word "insuring". I took an exception to your language but did not request corrective instruction.

7 THE COURT: I denied his request.

MR. McEVOY: I am not quarreling with that. I just want it to be clear on the record as to what my position is.

THE COURT: I think you made your position very clear.

MR. De PETRIS: Your Honor, Mr. McEvoy is excepting to that portion of the instruction. I would request, and I thought your Honor was going to do that with regard to Eastern and Harry Bernstein and Florence Behar.

THE COURT: Let's see now if we have the right one that we are referring to.

MR. De PETRIS: Page 21,426.

THE COURT: That is not the one I had in mind. I'm sorry, Mr. McEvoy. That's not the one I had in mind. 426 is the one I had in mind.

21,426, right? Line 17. "You may find that any person in such a position had an affirmative duty to insure that statement," and I said I would take out the word "insure," and use the word "verify." Right?

MR. McEVOY: I wanted it to be clear, your Honor, that --

MR. De PETRIS: Duty to -- duty to investigate and exercise proper credit judgment. The same as with

7a Pastorr, on the top of that page. 21604a

THE COURT: Oh, yes.

MR. DE LITRIS: In other words, same --

(Continued on next page.)

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THE COURT: Duty on the mortgagee to investigate and exercise the proper mortgage judgment. Credit judgment.

MR. DE PETRIS: That same duty would apply to Behar and Eastern Service. Behar and Bernstein rather than to "insure."

THE COURT: Is that what you are objecting to, Mr. McEvoy?

MR. MC EVOY: My objection was generic in terms. I was trying to point out, that Mr. DePetris, because of his inadvertent malaproper, when he said "I think Mr. McEvoy requested and we would agree," I did not request. I don't care whether they agree or not.

My objection stands as a mistake at the time, and I think that the Court's proposed correction only compounds the error in respect of the argument that I have already made in respect of that section of the transcript of the charge.

THE COURT: And therefore, I will not aid in confusing the jury and I deny that request, so you can take that one off.

Go ahead.

MR. DE PETRIS: I don't understand what Mr. McEvoy --

THE COURT: No. Just keep going. 21606

MR. DE PETRIS: You can't except and not --

THE COURT: Mr. DePetris, the record speaks for itself. YOu keep right on going.

MR. DE PETRIS: The government still requests that correction be made, your Honor, in light of Mr. McEvoy's exception. It may not be a request for a supplemental instruction but it at least is an exception and the government requests that that be corrected.

The government would ask the Court to clarify a number of -- a number of defense counsel referred to the fact that the charge that your Honor gave on the interest of defendants might possibly -- might possibly be interpreted by the jury to relate to the defendants' witnesses. I think it was Mr. Obermaier who referred to that , that the -- Dun & Bradstreet's witnesses do -- might not have a vital interest in the outcome of the trial.

The government would ask, in light of those exceptions, that your Honor clarify to the jury that your charge as to the interest of a defendant in the outcome of a case applies to the defendants, not to defendants' witnesses.

THE COURT: I am not going to get involved in

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that. Denied.

MR. DE PETRIS: As I mentioned before, Mr. Vall's point about "should be and may be," the government has no objection, if your Honor wishes to clarify that, on the question of motive.

THE COURT: I do not recall my saying that, but if both of you agree that I did say it, I must have, and I will find that portion. Okay.

MR. DE PETRIS: On the question of Section 2(b), the willfully cause section of Subdivision (b) of Section 2, the willfully cause part of action -- of the section, your Honor instructed the jury as to those two credit reports, where there was no reporter, that they couldn't apply the aiding and abetting instruction, and as to those two, they should apply the --

THE COURT: B.

MR. DE PETRIS: The B.

In our request to charge, we asked the Court instruct the jury may apply Section 2(b), both of those two, as well as the other eight substantive counts which they are also -- can apply the aiding and abetting instruction too.

THE COURT: I am going to refuse to change it with regard to that. I think when I was talking

about 2(a), I was talking about all the counts, and then when I zeroed in on the 2, 15 and 22, I said only 2(b).

MR. DE PETRIS: That's right your Honor.

THE COURT: Repeat it? It also applies? The whole thing applies.

MR. DE PETRIS: As the instruction is --

THE COURT: No. I get what your point is. 2(b) could have been on all of them, too.

MR. DE PETRIS: Right. As it is instructed now, the jury might think they could only apply that instruction to those two particular counts.

THE COURT: I will leave it as it is.

MR. DE PETRIS: Finally --

THE COURT: You take it out of context, you will create a lot of confusion. I will not do it.

MR. DE PETRIS: Finally, as to the question of specific intent, which your Honor has defined as the concluding phrase of your Honor's definition of specific intent was a purposely intending to violate the law, and the government would ask that you further clarify that by telling the jury as a purpose required is one a purposely to disobey or disregard the law, and I would refer your Honor to --

THE COURT: Refer to the page first because

I think I do use both of those, to disobey and to disregard or to disregard.

MR. DE PETRIS: Your Honor used disobey and disregard when your Honor defined willfully as it relates to the conspiracy count, but every time that your Honor defined "specific intent," you said "purposely intending to violate the law."

THE COURT: Let's find out. Do you have the page? Mr. DePetris? So that I can find it a little bit easier?

MR. DE PETRIS: There were several times when your Honor defined specific intent. The first time would have been in connection with Jankowitz.

THE COURT: I used it in the conspiracy count first, I think.

Specific intent, I said, "specific intent, as the term applies, means more than the general intent to commit the act. To establish specific intent the government must prove that the defendant knowingly did an act which the law forbids or knowingly failed to do an act which the law requires to be done, purposely intending to violate the law."

Then I go on and explain it more.

MR. DE PETRIS: Yes.

THE COURT: You want me to read the whole

thing again?

MR. DE PETRIS: No. The last phrase, "Purposely intending to violate the law," which I would ask your Honor to focus on, and I would submit that it should be purposely intending to disobey or disregard the law.

THE COURT: I think in one place I did and in another place I didn't. I will leave it as it is.

MR. DE PETRIS: May I have a moment to confer.

THE COURT: Yes, you may.

(Continued on next page.)

BS/LH 8/1

MR. BRODSKY: If your Honor pleases, while the conference is taking place at the prosecution table there, at the conclusion of the case when we discussed the request to charge which we furnished to you, your Honor made certain rulings that he was going to charge -- he denied except as your Honor would charge in his main charge.

At this time, if your Honor pleases, I respectfully except to your Honor's failure to charge as requested in the request to charge submitted on behalf of Harry Bernstein, Eastern Service Corporation and Rose Bernstein, a/k/a Rose Shorenstein.

THE COURT: All right.

MR. SOVIERO: Of course I join in that too, if it please the Court.

THE COURT: He just got through talking for you.

MR. KLEIN: I join, your Honor.

MR. DE PETRIS: That is a very broad request, your Honor.

THE COURT: I know. I am noting the exception.

MR. DE PETRIS: Two other things, your Honor: First, the Government would not object but would ask that your Honor instruct the jury insofar as

Mr. Obermaier's requested as to the conspiracy count, that it is only off the first one they should focus on that is binding Dun & Bradstreet on the conspiracy count.

THE COURT: Focus only on the actions of Prescott?

MR. DE PETRIS: As it relates in the conspiracy count.

THE COURT: In other words, they are to disregard all the testimony of the credit reportors?

MR. DE PETRIS: No, not to disregard the testimony.

THE COURT: What do you want to do about that? How are you going to now start to distinguish? If I change it in the conspiracy part of my charge I have to change it in the substantive part of my charge, too. I have to start all over again.

I will let the record stand as it is. That request is denied.

MR. DE PETRIS: Lastly, I would just once again ask your Honor, because I think this is an important issue, the question of the affirmative duty --

THE COURT: I am going to do that as I said I would. Is that the one that again refers to Pages 21004, 5 and 6?

MR. DE PETRIS: Yes your Honor.

THE COURT: I am going to do the part that Mr. Ball talks about, because both he and you agree that I did not use the word "should" both times and I will take your respective words for that. Then I will also that Count 11 is not to be considered as an overt act and, however, they can consider the testimony that was produced by way of evidence with regard to the particular count.

MR. DE PETRIS: As to the duty question, that was half of it, the duty with respect to Bohar and Eastern Service and Barry Bernstein. The Government would also ask that the duty be clarified to the jury with respect to Dun & Bradstreet and Prescott, and that is that it is a duty to attempt to verify rather than a duty to verify. That was on Page 21387.

THE COURT: If it is fair for one it is fair for the other. 387?

MR. DE PETRIS: Yes, your Honor.

THE COURT: Where is that on that page?

MR. DE PETRIS: Line 17.

THE COURT: You may find that a person in such a position had a duty to attempt to verify.

MR. DE PETRIS: Yes.

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MR. WALL: Your Honor, will you once again note that MR. Prescott excepts to that on the two grounds stated before.

THE COURT: Yes.

MR. DE PETRIS: If I just might suggest a possible form that that could be clarified to the jury --

THE COURT: Without going through 40 pages?

MR. DE PETRIS: You might remind the jury that you have spoken to them about an affirmative duty which was a question of fact for them to decide and that you would like to clarify the nature of the duty, that is with respect to Eastern Service, Harry Bernstein and Florence Behar, the nature of the duty is one to investigate an exercise proper credit judgment, and that with respect to Dun & Bradstreet and Arthur Prescott the nature of that affirmative duty would be to attempt to verify.

THE COURT: Just in one paragraph like that?

MR. DE PETRIS: Yes, your Honor.

MR. BRODSKY: Of course we object to that.

THE COURT: We will take a ten minute break and then I will call the jury in.

May the record note that it is not 2:30 which is just a little more than four hours since we

started this morning, and we have been continuing since that time. If I were to add those four hours onto my charge, which ended Friday afternoon at 4:10, it would have been 8:20 or 8:30 before anything would have happened, and if for no reason but that I think the record substantiates the action that I took on Friday.

We will take a ten minute break.

MR. BRODSKY: Can't we have a little lunch?

THE COURT: No sir. I'm going to let you go to lunch after I tell the jury they may start to deliberate. If we go to lunch and then tell them to start deliberating it will be 4:30.

MR. BRODSKY: They can start deliberating tomorrow, Judge.

THE COURT: No, they will not. That's the very reason I'm not going to do it because of what has happened since Friday. It has been no ulterior motive on the part of the Court to stall for a delay, and there is going to be none.

MR. BRODSKY: Why punish us by not giving us lunch? They have had their lunch.

THE COURT: If you call it punishment, it applies to everyone.

MR. BRODSKY: They said they will work till

5:30. C 707

THE COURT: That's all they will work.

MR. BRODSKY: Fine. Let them sit there. They have eaten. We haven't eaten yet.

THE COURT: You can sit there and wait the same as everybody else will.

We will take a ten minute recess and we will be back.

(Recess.)

THE COURT: Would you please bring in the jury.

(Jury present.)

THE COURT: First of all, ladies and gentlemen of the jury, I want to say to you I am sorry that it took us so long since I completed my charge to you to now, but I want you to know that that is part of the proceeding, and as I indicated to you the reason for the recess as far as you are concerned was to give the attorneys an opportunity to talk to me concerning my charge, which they have done. I might tell you, too, that they have not gone out to lunch yet nor has anybody else, so that there has been no delay here on anyone's part so that we are just sorry that it took so long.

Now, there were a couple of things that were brought to my attention which I would like to clarify.

You will recall during the very early part of my charge I told you something about the word "motive." And I am going to tell you that in -- it was brought to my attention, too, that in telling you about motive I used the word "should" once and "may" another time, so I am going to tell it to you now as it should be so there will be no question, and I ask you to take this supplemental charge as being in place of and instead of that part of the charge as it was made when it was made.

I am going to read it to you so there will be no change.

In order to establish the commission of a crime by any person, the Government need not prove that the person had a motive to commit the crime. If, however, the Government does prove that a particular defendant had a motive to commit the crime, the motive should be considered by you in determining whether the defendant actually committed the crime.

If, on the other hand, no motive is shown, the absence of a motive on the part of a particular defendant should be considered by you in determining

whether he actually committed the crime.

There was also brought to my attention that when I advised you that Count 11 of the substantive count had been dismissed by the Court as to the defendant Dun & Bradstreet and Arthur Prescott, I failed to tell you that Count 11 cannot be used as an overt act. And I now charge you that it cannot be used as an overt act. However, you may take into consideration in your deliberation the testimony that was adduced as to that particular count in considering the state of mind, both of the defendant Arthur Prescott and Dun & Bradstreet.

Now, I also was asked to clarify the charge that I gave you concerning the affirmative duty.

You will recall that I referred to affirmative duty as being a question of fact for you to determine if the FHA plays an affirmative duty on various defendants. I would like to clarify the nature of that duty which you may or may not find exists.

As to Eastern Service, Barry Bernstein and Florence Behar, the question is, one, was there a duty to investigate and exercise proper credit judgment with respect to statements contained in applications for mortgage insurance submitted to the FHA?

As to the defendant Dun & Bradstreet and Arthur Prescott, the question is, one, whether there was a duty to attempt to verify statements made in the credit reports?

With those corrections, I now am at the point where I must reluctantly, and I really mean that, must reluctantly discharge the alternates. Mr. Cain, Mr. Polloli, and not in that order, of course, Mr. Hymavitch, as I indicated when the other alternates were discharged, I don't know how to express my thanks to you on behalf of the Court and on behalf of everybody else. You have been wonderful you have paid very strict attention and I am sure that everyone of you, the three of you, are in a position to be able to jump in at any time if the need arose.

So that you have accomplished for this case your duty and, as I refer to it once before, a privilege, and you are now discharged because you cannot go into to deliberate on the case as is required under our rules, which make limits only to the twelve.

So you are excused from further consideration of this case, with the thanks of the Court. Again I remind you, as I remind the others, don't talk about

this case until it is all over. After it is all over I will inform the others, and I will inform you now, that you may talk to a lawyer in this case or to anyone, but you also do not have to; it is your right to either talk to him or not talk to him. If you do, then I should say that you should limit your conversation to your own participation and not to what others may have said or what others participated in, because they have the same right as you do.

So you are excused with the real thanks of the Court.

(Alternates excused.)

THE COURT: Now, to our twelve jurors, I told you that I would give you, when you went in, the two exhibits, namely, Court Exhibit 25, which was the list for each defendant, Court Exhibit 24, which was the indictment broken down into count by count with the spaces for you to make the notation as to guilt or innocence of each defendant involved in that particular count, and then, as I told you, I would give you also immediately the ten credit reports or factual data reports that were discussed by me and also by Mr. Obermaier in his summation and, as I told you, each of these credit reports at the upper left-hand corner indicates what count

it refers to and what exhibit you will find that original paper in.

Then the same thing with the 2900 forms. Those two in the upper part you will find -- these are the ones Mr. Bashian referred to in his summation, of which I talk of. You will find on the top of them, too, the count number and the exhibit number in which the original of those particular applications, 2900 form applications will be found. So I will put these four in this envelope.

I will ask Mr. Guisti to provide you with paper and pencil and I don't know how at the end of the day we are going to deal with these papers, as I can't let you go home with them and I can't leave them in the jury room.

MR. MC EVOY: Give them to the Marshal.

THE COURT: That's what I was going to suggest. Give them to the Marshal or to Mr. Guisti, whoever you want, but I think it's preferable in the hands of the Marshal.

Do you have a place to seal that for the night?

THE MARSHAL: Yes, your Honor.

THE COURT: Fine.

Now, ladies and gentlemen, you may retire and

begin your deliberations on this case. I just want to refer, again, to the remarks that I have made so many times, this is a very important case to everybody involved and I am sure you will perform your duty in accordance with your oath, as you gave it at the very beginning of this case, and as we reminded you of so many times during the course of the trial.

You will remember that we agreed that at 5:30 would be the end of the day. I will remember that.

(Whereupon at 3:00p.m. the jury repaired to commence their deliberation.)

THE COURT: All right gentlemen, you may go to lunch and then come back and make yourselves available.

MR. BRODSKY: Judge, I most respectfully except to that portion of your Honor's charge which you just delivered to the jury with respect to the duty for them to investigate whether it was a duty to verify -- whether it was a duty for Harry Bernstein, Eastern Service to investigate and verify.

I except to that portion.

MR. SOVIERO: I respectfully except, if it please the Court, to your remarks to the alternates.

THE COURT: Oh, yes, all right.

MR. WALL: Mr. Prescott excepts to that portion dealing with Dun & Bradstreet and Mr. Prescott.

THE COURT: As to the verification?

MR. WALL: As to the attempt to verify.

THE COURT: Yes, noted.

MR. WALL: For the reasons already stated.

MR. ROSENKRANZ: Mrs. Behar excepts.

THE COURT: And Mr. McEvoy on behalf of Eastern Service.

MR. MC EVOY: Yes, Eastern Service joins in the exception.

THE COURT: All right. You can go to lunch now. If they have a request they will have to wait until everyone comes back.

(Luncheon recess.)

(Continued on next page)

GR fls.

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(The following occurred in the absence of the jury at 4:40 o'clock p.m.)

THE COURT: O.K., gentleman. Hereafter, I guess we will be working on a regular schedule and we will be more readily available when I get a note, if we should get notes, so for today, of course, it could be excused. We were out for lunch.

But at five minutes of four I received the first note from the jury and it will be marked as a Court Exhibit.

THE CLERK: 26, your Honor.

THE COURT: It says, "Please read law as to what constitutes conspiracy."

THE CLERK: Note from jury marked Court's Exhibit 26.

(So marked.)

THE COURT: I think we should read it from the transcript rather than from my own notes, and that burden I will place on the reporter. I do not have my transcript with me. It would be the first day, which would be the 13th.

MR. BASHIAN: Your Honor, in light of the fact that just in the very abbreviated transcripts to which Mr. -- I think it was Mr. McEvoy who made reference to, or Mr. Brodsky, during the course of

their objections and exceptions, we found several errors that say, understandable enough, because there were so many words, but there were some errors and do you think, sir, it might be advisable to have you read from your notes?

MR. SOVIERO: Absolutely not. Excuse me, your Honor.

THE COURT: You are making a request of me, aren't you?

MR. BASHIAN: Yes.

I wasn't speaking to Mr. Soviero, but apparently he saw fit to answer. No.

If your Honor recalls, this morning there were a number of occasions that I recollect where you were comparing your notes to the transcript, and in one point an "of' was written where it should have been an "or" and other little things like that.

MR. ACCETTA: A Fey and failure.

MR. BRODSKY: Give them the charge as you gave it to them.

MR. SOVIERO: Absolutely, your Honor.

Regardless of what your notes say. That's why I said "absolutely not."

I am surprised at Mr. Bashian.

THE COURT: LIsten.

MR. SOVIERO: Excuse me, sir.

THE COURT: When I want anybody's advice as to what I should do, I will open it up to discussion. I have not done so.

I am going to allow the charge to be read from the record as it was made. If in the course of the reading of that charge I find that there is something in the record that requires change, I will stop him and make the change.

I think I should start at -- would you refer to page 21259? No. That's not correct either. No.

It should follow after I read Count 1.

MR. OBERMAIER: It should begin at 21272, your Honor.

MR. MC EVOY: Line 10.

THE COURT: Well, I do not think it is necessary to read the count again, is it?

MR. ROSENKRANZ: No.

MR. OBERMAIER: I don't have any objection if your Honorpermits a reading of the count.

MR. BRODSKY: They just want the conspiracy, that's all.

MR. MARTINE: Yes. I agree.

THE COURT: What?'

MR. MARTINE: I would say just the law on conspiracy.

THE COURT: Which would mean after reading the count.

MR. BRODSKY: Right.

THE COURT: So I think it would go beyond that.

MR. MARTINEZ: Fine.

THE COURT: Page 21279, the first full paragraph starting on line 5. Right?

"Therefore, Count 1, which is the conspiracy count."

O.K., Mr. Reporter.

Will you bring the jury in, please.

MR. WALL: Where do we stop, your Honor? Is it clear?

THE COURT: Oh, we must have ended that day and started the next day.

MR. BRODSKY: Up to line 23 of 21284.

THE COURT: 284? No, that's only a short way into it.

21306. 21306 is where I said, "Now, I shall be turning my attention next to the substantive counts."

And then we adjourned for the day, I think. Is that correct?

MR. BRODSKY: YOu see, Judge, in between there is a lot of other stuff that hasn't anything to do --

THE COURT: Where?

MR. BRODSKY: 21303. You charged specific intent.

THE COURT: That was the definition.

MR. BRODSKY: Knowingly.

THE COURT: Definitions in conspiracy.

MR. BRODSKY: The law of conspiracy.

THE COURT: Yes.

MR. BRODSKY: The law of conspiracy, two or more, Section 371.

THE COURT: What's that?

MR. BRODSKY: That's the law of conspiracy.

THE COURT. You just want me to read the Section, 371?

MR. BRODSKY: Yes.

THE COURT: And if they want the whole charge with respect to it? I agree with you that what they write is just the law which would mean a repeat of 371.

MR. BRODSKY: Exactly, unless they want something more.

THE COURT: I do not know if that is what they want, but let's find out. That would make it nice and easy.

MR. BRODSKY: Supposing you read them that and ask them, "Does that answer your question?"

THE COURT: All right, bring the jury in, Mr. Marshal.

Somebody will sound foolish and it is not going to be me.

(Jury present)

THE COURT: Now, ladies and gentlemen of the jury, I first want to apologize for being so late in bringing everybody to attention after you sent in your note, but that was, as you would understand, due to the fact that after I sent you in to begin your deliberations, I then for the first time told everybody else that they could go out to lunch. So that they used their time, of course, to have lunch.

Then I corralled them all together and this was the first opportunity I had to bring them all together and call you in.

Now, your note, which has been marked Court Exhibit 22, reads as follows: "Please read law as to what constitutes conspiracy."

Now, I am going to read the law to you, 371, Section 371, and then ask you if that is all you are asking for. Section 371 of Title 18 of the United States Code provides in part, pertinent to this case, and to this count -- and I was reading count one at the time -- as follows: If two or more persons conspire to commit any offense against

the United States, and one or more of such persons do any act to effect the object of the conspiracy, each is guilty of an offense against the United States."

Is that all you wanted to hear?

JUROR NUMBER TWO: May I speak?

THE COURT: Mr. Loschert?

JUROR NUMBER ONE: The involvement of the companies as regards conspiracy.

THE COURT: Do you want -- say it again.

JUROR NUMBER ONE: The involvement -- how companies or employees would be involved in a conspiracy. The liability of the company.

THE COURT: Of the corporations involved.

JUROR NUMBER ONE: Of the corporations involved.

THE COURT: All right.

JUROR NUMBER ONE: As employees.

THE COURT: In other words, how the corporations could become involved?

JUROR NUMBER ONE: Involved through their employees.

THE COURT: The corporate liability part of the charge.

If you fellows want to refer to a particular part of the charge while I look for it, too, we can have the reporter read it.

At this point I must advise you that everything

that is read back must be read back from the transcript, by the reporter, and not from my own notes. So that I will zero in on it, if I can, from my notes onto the transcript, and then I will have the transcript read to you.

MR. DE PETRIS: I think it starts on page 21286. I believe.

THE COURT: 286? I will let you know.

Page 21286, starting with line 9. Would you cross check with me? And going to? 21289?

MR. DE PETRIS: Yes, your HOnor.

THE COURT: Including line 15, is it?

MR. DE PETRIS: Yes.

THE COURT: Is that correct? Are you following me?

MR. MC EVOY: I follow what your Honor is saying, yes.

THE COURT: What's that?

MR. MC EVOY: I follow what your Honor is saying, yes.

THE COURT: I was waiting.

I will ask the reporter to read page 21286, starting at line 9, where I placed a red pencil mark, and go on to page 21289, to and including line 15, where I placed another red line.

(Record read as indicated.)

THE COURT: O.K.? All right, you can return then to continue your deliberations and we will be available to you.

We agreed that we would go on until 5:30. But use your judgment. We will be available if you want anything. Just send in another note.

JUROR NUMBER ONE. Thank you.

THE COURT: O.K.

(The following occurred in the absence of the jury.)

THE COURT: All right, gentlemen, we will stay available.

MR. OBERMAIER: Your HOnor, rather than interrupt the proceedings at a subsequent time, I will object to the jury having now been sworn and being in the custody of the Marshal, being allowed to separate during the course of the deliberation. At 5:30.

THE COURT: You did that the other day.

MR. OBERMAIER: Right. I just wanted it clear. Now the alternates are dismissed.

THE COURT: All right, sure. O.K. We will stand at ease until we either get another note or I discharge them for the night.

(Recess taken.)

(continued next page.)

(The following occurred in the presence of the jury at 5:35 PM.)

THE COURT: May the record now indicate that I have been informed by the jury that the bewitching hour of 5:30 has come, and is almost gone by five minutes, and that they would like to be permitted to go home for the night. That was our understanding, with the Court's approval, and I am going to excuse the jury for the night.

Now, ladies and gentlemen of the jury, you are only twelve now. I have no alternates, and the admonishment, of course, now becomes important to the extent that nothing can be done about it by the substitution of an alternate or anything of that nature, should a change have to be made.

For this case now, which is so important to everybody concerned, rests in your hands, and I am going to tell you in as strong words as I know how, please take good care of yourselves. Watch for everything that's possible on the way home.

Again, don't read anything. Pile up your newspapers, as I told you the other day, until you are completed with your deliberations, and then read the back papers. I am about a month behind in my newspapers, so you can do the same for a short period of

time.

Do not listen to any commentators on the radio or television, and whatever you do, do not call each other up and talk about the great idea you thought of, because that idea, that great idea you thought of must be expressed, if it has anything to do with this case, must be expressed in the presence of each of you and in the presence of each other. All twelve of you must be together in discussing any part of this case. So that you cannot form an opinion by yourself and not discuss it with your fellow jurors. As I told you in my charge, from now on everything must be discussed in the presence of each other, all twelve of you, while you are deliberating, and no discussions are to be had among one or two or three or four of you to the exclusion of the others. All discussions must be had together.

Your decision, as you will be asked to do on each count, will be based upon a unanimous decision, by each of you, and it must come from and flow from your deliberations together.

Okay, so you are excused for the night and please be extraordinarily careful and we will see you, with the help of God, tomorrow morning, and you can continue from where you left off today, and that is

tomorrow morning at 10:00 o'clock.

Now, do not start deliberating until Mr. Juisti let's me know that all twelve of you are here, and I want to be sure that all twelve of you are present, and then I will say, "Go ahead and continue." So that you won't have to be called in tomorrow morning and told by me to start. Once I know -- once Mr. Juisti tells me that all twelve of you are here, I will send in the word to you to continue.

Then we will stand at ease, all of us, until such time as you may send in a note or a request or whatever it is.

Okay, you are excused for the night. Thank you very much.

Everybody else stay at ease here until the jury has had a chance to leave the courtroom.

(The following occurred in the absence of the jury.)

THE COURT: For the record, may the record indicate that I gave to the Marshal the papers which I had given tothe jury which Mr. Juisti sealed and they were remanded in the hands of the Marshal till tomorrow morning when they will be turned over to the jury for continuance of their deliberations.

THE MARSHAL: Right, your Honor.

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THE COURT: Okay, gentlemen, I will see you tomorrow morning at 10:00 o'clock. Good night, everybody.

MR. BRODSKY: Good night.

(Whereupon, a recess was taken until June 18, 1974 at 10:00 o'clock a.m.)

* * *

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★
JUL 5 1974
TIME A.M.
P.M.

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UNITED STATES OF AMERICA, :

-against- :

HARRY BERNSTEIN, ROSE BERNSTEIN, : 72-CR-587
EASTERN SERVICE CORPORATION,
HERBERT CRONIN, FLORENCE BEHAR, :
DUN & BRADSTREET, ARTHUR PRESCOTT,
MELVIN CARDONA, JOSEPH JANKOWITZ, :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

June 18, 1974

B e f o r e:

HONORABLE ANTHONY J. TRAVIA, U.S.D.J.

and a Jury

GENE RUDOLPH
OFFICIAL COURT REPORTER

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Appearances:

DAVID G. TRAGER, ESQ.,
United States Attorney
for theEastern District of New York

BY: ANTHONY ACCETTA, ESQ.,
RONALD DePETRIS, ESQ.,
-and-
GEORGE BASHIAN, ESQ.,
Assistant United States Attorneys

ABRAHAM BRODSKY, ESQ.,
Attorney for Harry Bernstein

JOSEPH P. SOVIERO, JR., ESQ.,
Attorney for Rose Bernstein
-and-
LOUIS BERNSTEIN, ESQ.,

ANDREW T. McEVOY, ESQ.,
Attorney for Eastern Service Corporation

BODELL, GROSS & McGOVERN, ESQS.,
Attorneys for Herbert Cronin
BY: LOUIS MARTINE, ESQ., Of Counsel

RICHARD I. ROSENKRANZ, ESQ.,
Attorney for Florence Behar

(continued next

Appearances: (Cont.)

WHITE & CASE, ESQS.,
Attorneys for Dun & Bradstreet

BY: OTTO G. OBERMAIER, ESQ.,
-and-
JOHN McAVOY, ESQ.,
Of Counsel

PATRICK WALL, ESQ.,
Attorney for Arthur Prescott

IRVING J. KLEIN, ESQ.,
Attorney for Melvin Cardona

BY: MICHAEL R. KLEIN, ESQ.,
Of Counsel

BOOTH, LIPTON, & LIPTON, ESQS.,
Attorneys for Joseph Jankowitz

BY: ALLEN LASHLEY, ESQ.,
Of counsel

/td 1

THE COURT: Gentlemen, I am informed that the jury is assembled and ready to proceed, so if there's no objection, I will ask the Marshal to give the jury the envelope which was sealed yesterday afternoon and tell them to continue their deliberations.

MR. ACCETTA: No objection.

THE COURT: May the record indicate that late yesterday afternoon, Mr. Brodsky told me that he could not be here because of some engagement he has in another Court, and that he would not be here much before twelve o'clock, and he indicated to me that Mr. Mcevoy would pinch-hit for him and his client, Mr. Bernstein would have no objection, and I assume that is correct.

MR. MCEVOY: That is correct.

THE COURT: I don't see Mr. Bernstein here.

MR. MCEVOY: He is here. He is out of the courtroom.

THE COURT: It's all right with you?

MR. MCEVOY: Yes, your Honor.

THE COURT: Then I will tell the jury to continue.

Did you deliver the envelope?

THE MARSHAL: Yes.

THE COURT: Tell them to continue now and we'll stand at ease until we get further notification.

Mr. Bernstein, I just indicated on the record that Mr. Brodsky would not be here until about twelve o'clock, and that he had informed me that Mr. McEvoy would pinch-hit and that would be with your consent.

DEFENDANT HARRY BERNSTEIN: Yes.

THE COURT: All right. We'll see you in a while.

(Recess taken).

(Time noted, 10:30 A.M.)

THE COURT: First of all, at 10:25, I received the following note which is marked Court Exhibit 27 and which reads as follows:

"Jury requests:

"Mortgagee's handbook", which I believe was 145 and 147.

"FHA Manual" which was 145 or 147, either of the two --

THE CLERK: L45 is the Manual and 147 is the Mortgagee's Handbook.

THE COURT: "Dun and Bradstreet reporting instructions". They believe it is 139.

THE CLERK: IH.

THE COURT: I didn't think they had the right number. They put a question mark there, anyway.

C 733

MR. ACCETTA: Here it is, your Honor.

THE COURT: Take your tabs out of it. It should go in fresh and clean with no tabs indicating particular paragraphs.

Then, they ask for "Check Cardona gave to Abad."

MR. DE PETRIS: There are two sets of checks, your Honor, and I believe Mr. Klein has something he wants to say about that.

MR. M. KLEIN: Yes, sir.

As far as I am concerned, there is only one set of checks in question.

If they request the checks from Kapraki --

THE COURT: No, they said "Cardona".

MR. DE PETRIS: This was given by Kapraki to Cardona to give to Abad.

MR. KLEIN: No.

DEFENDANT CARDONA: No --

THE COURT: I am not asking you, Mr. Cardona.

MR. DE PETRIS: We can ask the jury what they want.

MR. M. KLEIN: Who is the payee on those checks?

MR. ACCETTA: You ignored the testimony.

THE COURT: I'm going to ask the jury.

MR. M. KLEIN: Fine, but I'll object to your Honor asking the jury.

THE COURT: You may object, and your objection will be noted, but I am going to ask the jury as to those checks.

They asked for "FHA files, Exhibit Nos. 29, 25, 9, 33, 49, 7, 1, 3 70, 47, 37, 5, 23, 15, 17, 11, 21 and 27."

I think that's a total of 18 files.

Do you have them there?

THE CLERK: Yes.

THE COURT: Now, since receipt of that note and about five minutes ago, which would make it about 10:40, I received two other notes.

The first one, I will mark Court Exhibit No. 28, and it reads:

"Jury requests lunch in the park for fear of stir-craziness."

I purposely arranged to have luncheon brought in so we couldn't kill two hours. Every time the jury goes out, and if you take two hours out of the day, when they are only working until 5:30, it may just as well be a permanent job that no union could fight for.

However, I will do this: When the lunch is

given to them, maybe the Marshal can arrange to take them for a walk around Cadman Plaza.

The next note I have gotten, which the Court will mark Court Exhibit 29, reads as follows:

"Jury requests files on" -- make a note, because you'll give them -- "Count 30; 260 51st Street" and "Count 34; 211 53rd Street."

I assume you can get them easily enough.

THE CLERK: Number 77, which is 260 51st Street.

THE COURT: And the other is 211 53rd Street, --

THE CLERK: 27.

THE COURT: Which was the 51st Street file?

MR. LASHLEY: 77, and the other one was --

THE CLERK: 27.

THE COURT: Then, they also want "Government stipulation regarding assignment of second mortgages to Jet Warehouse."

MR. DEPETRIS: I'm not sure that was in writing.

MR. ACCETTA: Yes, it was.

MR. DE PETRIS: I don't think so. I think that was read, your Honor.

THE COURT: Was it read?

MR. DE PETRIS: There was a document he was readig from, but I think it was just read into the record.

Mr. Bashian is next door before Judge Dooling and I will check with him.

THE COURT: Will you check with him?

MR. DE PETRIS: Yes.

THE COURT: After Mr. De Petris gets back, I will call the jury in.

MR. M. KLEIN: I'd like to be heard.

THE COURT: About what?

MR. M. KLEIN: Concerning what I believe you are going to ask the jury.

THE COURT: I have already decided that.

MR. M. KLEIN: If I might make the record.

THE COURT: Of course.

MR. M. KLEIN: It is my understanding that the jury has asked for the checks from Melvine Cardona to Jose Abad, and it is my --

THE COURT: It just says "Checks Cardona gave to Abad." It doesn't say "made from" or anything of that nature.

Is there any objection to my asking them to clarify the question?

MR. M. KLEIN: Yes.

They should be given the checks, and then if they want further checks --

MR. OBERMAIER: I have an obligation, your Honor.

MR. DE PETRIS: It was in writing.

THE COURT: Then we'll find it.

MR. DE PETRIS: I am sorry. It was not in writing.

THE COURT: Do you have what you read from?

MR. BASHIAN: Yes, it's downstairs, and I think the best evidence is the transcript of March 21.

THE COURT: Yes. If you get me the transcript, you will have the Reporter read that part of the transcript.

What day was that, Mr. Bashian, the 21st?

MR. BASHIAN: Yes, sir; March 21.

THE COURT: Do you have that transcript?

MR. BASHIAN: Miss Drexler is getting it.

THE COURT: Okay. Then we can read from that.

Now, Mr. Obermaier, you have a request?

MR. OBERMAIER: Yes, your Honor, I do.

I have been informed that there were references to this case in the news media, specifically, the radio broadcasts. Two have been identified to me and both occurred this morning. I did not hear personally, either one of them.

Thefirst appeared on CBS radio news this morning, and I have been informed that in substance, the news broadcast was that this case went to the jury

for deliberation yesterday.

THE COURT: Big secret.

MR. OBERMAIER: It's the longest case in this Federal District.

THE COURT: That's a big secret, too.

MR. OBERMAIER: And a number of defendants have already pled guilty.

The other news broadcast, I'm informed, on WRFM--

THE COURT: Stereo.

MR. OBERMAIER: I don't know, Judge, but if it is --

THE COURT: Don't you have stereo in yourcar?

MR. WALL: Make two applications.

MR. OBERMAIER: In substance, it was thatthe case went to the jury for deliberation.

We objected to the Court separating last evening, and thought the appropriate remedy was for the jury to be sequestered, but the Court, having chosen that they were to be separated, I think it is incumbent upon the Court to question each juror separately, and ask what, if any contact they had with the broadcast.

THE COURT: I will take advantage of calling them in --

MR. OBERMAIER: Your Honor, we ask that each

juror be asked individually, and if your Honor does not, then I will have to ask for a mistrial.

THECOURT: I'll ask the jury in the form I have proceeded with up until now, so therefore, the request for a declaration of a mistrial -- I will deny that application.

MR. OBERMAIER: In yesterday's inquiry from the jury that occurred in the courtroom, I have had opportunity to read the transcript of what occurred, at that point, and I would ask the Court, on the basis of my reading of the transcript, to issue supplemental instructions to the jury, which will, I think, answer the problem or the inquiry they had.

Your Honor will recall the note sent out asked for the law on conspiracy, and your Honor read Section 371 and there followed your Honor's questions to the jury, "Is that all you wanted to hear"?, and Juror No. 2 said, "May I speak", and your Honor referred him to the Foreman.

The questions they wanted clarification on are the following -- I think it is one question, but I'll read it in context.

"Juror No. 1: The involvement of the companies as regards conspiracy. The involvement -- how companies or employees would be involved in a

conspiracy. The liability of the company, of the corporations involved, as employees". And then the Court says -- 21630, line 17, I guess -- I'm sorry -- line 16:

"THE COURT: In other words, how the corporations could become involved?

"JUROR NO. ONE: Involved through their employees."

Then your Honor read from the charge dealing with corporate liability.

I think what the jury was asking and what I'd ask the Court to do, is issue supplemental instructions; that they should be told that the corporation can enter the conspiracy only through the employees, and they must find that the employees entered the conspiracy and then determine the corporate liability, focussing on the fact that it is an employee or officer or agent, however you want to describe it, who entered the conspiracy, and then the question they should resolve is whether the corporation stands liable for that and the portion of the charge your Honor read from, did not, in our view, clearly answer or make that clear, and the jury may now have the impression that all that is necessary to find the corporation liable, is that you find some act within the scope of the employment--

THE COURT: By the employee--

MR. OBERMAIER: Yes, but what the jury is trying to say, and I think artfully, is, it -- as to the company -- "How do you get involved in a conspiracy?" And you should reread the three elements of the conspiracy.

(Continued on next page.)

THE COURT: I did that yesterday, didn't I?

MR. OBERMAIER: No, I don't think so and you have to look for an employee who joined on behalf of the corporation and then decided the corporate liability and I think that is what the jury was trying to say in that regard.

MR. DE PETRIS: I think the first point Mr. Obermaier makes -- the first essential element he read in the corporate criminal liability part of the charge was that an employee --

THE COURT: I think the word "employee" was specifically stated. I don't recall the exact words.

MR. DE PETRIS: The second element was within the scope of employment and the third, with intent to benefit the corporation but I recall your Honor saying one and that dealt with a criminal act committed by an employee.

As to a second point, apparently they didn't want anything else.

THE COURT: We don't, in this record that I have got, have the parts that were indicated. It just says --

MR. OBERMAIER: I think it probably does. I think you read from 21286.

THE COURT: "I will ask the reporter to read

page 21286, starting at line 9, where I placed a red pencil mark, and go on to page 21289, to and including line 15, where I placed another red line."

Then it says, "Record read as indicated." It's not written here.

MR. OBERMAIER: No.

I can lend you my copy.

THE COURT: Yes, may I?

MR. DE PETRIS: Line 22 is the part I was referring to, your Honor.

(Transcript handed to Court)

THE COURT: I think the first paragraph of that says, "I charge you that a corporation which can only act through its agents and employees is responsible for the acts of such agents and employees who violate the criminal law if such acts are done within the scope of employment and with intent to benefit the corporation or further the corporate business."

MR. OBERMAIER: I would ask your Honor to say they must find that an employee joined the conspiracy.

You say the standard is the same for both the conspiracy and substantive counts but the jury wants to find out --

THE COURT: That wasn't part of this part of the charge.

C 744

MR. OBERMAIER: True.

THE COURT: You want me to add a supplemental instruction?

MR. OBERMAIER: Yes.

MR. DE PETRIS: "One, you must find beyond a reasonable doubt that" -- "You must find beyond a reasonable doubt that, one, an agent or employee of the corporation has committed an act in violation of the criminal law."

That applies to the conspiracy and substantive counts.

THE COURT: Yes.

MR. DE PETRIS: If they wanted to know the essential elements for all of the conspiracy they could have asked.

If Mr. Obermaier wants the Court to read the entire charge on conspiracy --

MR. OBERMAIER: No.

THE COURT: I even said, "This standard of corporate criminal liability applies to both the conspiracy count and the substantive counts." In other words, I gave them, in order, one and then two and three.

"In order to find a corporation guilty of a crime, you must find beyond a reasonable doubt that,

one, an agent or employee of the corporation has committed an act in violation of the criminal law.

"Two, the agent or employee was acting within the scope of employment.

"And three, the agent or employee acted with an intent to benefit the corporation or further the corporate business."

I would indicate, in my own judgment, that that's all they asked for.

MR. MC AVOY: For the record, I join in the application with respect to publicity and the request for further clarification.

I believe they were asking how the corporation would be responsible under the conspiracy count and you read the definition under either conspiracy or substantive counts and they may not, at this point, appreciate the distinction as to the elements of those two offenses. The criminal liability may be the same but they are dealing with conspiracy on one hand and the substantive on the other.

THE COURT: Well, I think that if the jury wasn't completely satisfied after we read what we read to them they certainly had an opportunity yesterday afternoon to talk to each other and if they had not been satisfied with the answer given to them, I'm

sure they would have come back this morning or last night with another note saying they weren't satisfied so I am not prepared at this time to enlarge upon the charge which would mean I would have to enlarge at that point, by adding a supplemental request.

Do you have any objection to a supplemental request such as Mr. Obermaier suggested?

MR. DE PETRIS: No, your Honor. I don't think it is necessary but I am not objecting. I think your Honor covered what they wanted.

THE COURT: I'm going to let it stand just as is. I think I answered the jury's questions and if not, I would have known, post haste.

You can see they are beginning to start to look at particular files and talking about different things.

MR. OBERMAIER: Would your Honor ask if they wish further clarification of what they heard yesterday?

THE COURT: I asked them yesterday. I will ask them again if it is necessary.

MR. DE PETRIS: No objection.

I have here the page of the transcript starting with the stipulation.

THE COURT: Which page is it?

MR. DE PETRIS: 15441, March 21.

THE COURT: March 21, page 15441. I will have

the reporter read from mine.

MR. ROSENKRANZ: In your charge yesterday, page 21463 and 21464, your HOnor was discussing the false statement counts and you discussed -- you were discussing Harry Bernstein and Melvin Cardona and you stated to the jury that, "If you find that neither Eastern Service Corporation or Florence Behar committed the crime charged, you must acquit the defendants Harry Bernstein and Melvin Cardona in this Section 2 charge."

It is my contention that is not the law.

Cardona is charged with direct knowledge concerning the false statements and it doesn't seem to me, for the jury to have to convict Florence Behar, charged with reckless disregard in connection with Melvin Cardona charged with false knowledge in submitting the statements.

THE COURT: Mr. De Petris, do you want to answer that?

MR. DE PETRIS: In order to convict an aider and abettor. That's what it refers to.

THE COURT: We were on the aiding and abetting only.

Yesterday you should have taken exception.

MR. ROSENKRANZ: Well, I did but I only

recall, there is the original draft and the chart.

THE COURT: I think, both.

MR. MC AVOY: I believe it is 234 and 235.

THE COURT: Or 234 and 234a. Those are the two I referred to in my charge, anyway.

MR. MARTINE: May I hand this up to you? That's EJ-1.

MR. LASHLEY: They are two. Same reports.

MR. DE PETRIS: Is this satisfactory to everybody?

MR. MARTINE: I'm sure.

THE CLERK: This is EJ -- are you sure?

It's EI-1.

THE COURT: And?

MR. LASHLEY: 252.

THE COURT: EI-1 and 252.

MR. MARTINE: I have no objection.

THE COURT: That's 252.

THE CLERK: And EI-1.

THE COURT: And I believe the charts were 234 and 234a.

MR. DE PETRIS: Here's the chart and that's the draft.

MR. MC AVOY: I remember it. It should go in. That's what they asked for.

C 749

THE COURT: I'm going to ask them.

MR. DE PETRIS: I have no objection.

THE COURT: Okay.

All right, get the jury in, please.

(Continued on next page.)

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(The jury entered the jury box at 11:20 a.m.)

THE COURT: Good morning, ladies and gentlemen.

Let's see, now. First, if I can get these in the order in which I received your notes -- but before I do that I understand that there was some radio report concerning this case and I again want to remind you of my -- not "my" -- but your oath that was taken at the very beginning of this trial and my concern with regard to it, as you know, I have expressed time and again and I would like to ask again, now, if such commentators reports -- either by radio of some kind or by any other means -- was brought to your attention or if any one of you heard such a report?

(No response.)

THE COURT: I take it from the fact that no one of you has raised his or her hand that it has not been brought to your attention nor have you heard it. That's one.

Now, number two, the first note I received from you this morning is a request which has been marked Court Exhibit No. 27 which reads as follows:

"Jury requests:" and then a list of things.

First, the mortgagees handbook, which is here; two, the FHA Manual, which is here and both of which

will be given to you. Then, your next question is the request for Dun & Bradstreet reporting instructions -- Exhibit 139 with a question mark -- it is really Exhibit III and that's in this envelope which you will get and then you said you wanted checks Cardona gave to Abad.

Now, during the course of the trial you heard that we talked about several or at least two sets of checks and I would like to know from you which checks you are talking about particularly. Are you talking about those made out to Mr. Cardona himself or those made out to Mr. Abad himself or which?

JUROR NO. 1: The ones made out to Mr. Abad.

THE COURT: O.K.

Those checks are Defendants' Exhibit -- is that A-V in Evidence?

THE CLERK: No -- yes, A-V.

THE COURT: All right. A-V in Evidence, A-W in Evidence, A-X in Evidence, A-Y in Evidence and A-Z in Evidence and B-A in Evidence.

Those checks will be at your disposal.

MR. SOVIERO: I think the Foreman would like to address you.

JUROR NO. 1: If it is agreeable, we would like both sets of checks.

THE COURT: Is that what you are requesting?

THE JURY: Yes.

THE COURT: All right. Then I'll send you the second set and at this time I will indicate that it is a further request from you or otherwise I'll send you back and tell you to send me another note.

The second set of checks are Government's Exhibit 161-A in Evidence, 161-B in Evidence, 161-C in Evidence, 161-D in Evidence, 161-E in Evidence, 161-F in Evidence, 161-G in Evidence and 161 in Evidence, which should have been the first one, but that's all right. It doesn't make a difference.

These checks will be made available to you.

Your next request, on Court Exhibit 27 is for the FHA files, Exhibits No. 29, 25, 9, 33, 49, 7, 1, 3, 70, 47, 37, 5, 23, 15, 17, 11, 21 and 27.

They are all here and will be available to you. That takes care of Court Exhibit 27.

Now, Court Exhibit 28 and I can see by your smiles that you know what I am talking about.

"Jury requests lunch in the park" -- you don't mean Central Park, I hope -- "for fear of stir-craziness."

Well, I just want you to know that the luncheon sent in was primarily for the purpose that we have

found in the past when we send the jury out to lunch we cannot get the jury to reconvene within less than two hours and we felt that was a little long in view of the fact we agreed not to go beyond 5:30 at night but the Marshal, after you have your sandwich, will be glad to accompany you across the street to the park and allow you to get a little fresh air. That takes care of request 28.

Then, your next note, marked Court Exhibit 29:

"Jury requests:

"Files on Count 30; 260 51st Street and Count 34; 211 53rd Street." The 260 51st Street on Count 30 is Exhibit 77 and you will have that. Then, the other, relating to Count 34 is Court Exhibit 27 which is included in your first request in the list of files that you asked for. So, you will find 27 in that first batch and then, you wanted "Government stipulation regarding assignment of second mortgages to Jet Warehouse."

That wasn't in writing but read into the record and I will ask the reporter to read that portion of the transcript so pay attention, please.

It starts on the minutes of March 21, 1974 and starts on page 15441 and I will ask the reporter to begin reading on page 15441 from line -- there's no

line on this but I will put a red line and you will begin, Miss Ginsberg, with the words, "Mr. Bashian," which appear right under that red line and go to --

MR. McAVOY: 454, your Honor -- about the top third of the page.

THE COURT: I think so. It's much longer than I thought. Page 452.

There's no colloquy in that interim, is there?

MR. McAVOY: There are corrections --

THE COURT: But no colloquy excludable?

MR. McAVOY: None I can find. All was in open court in the presence of the jury.

THE COURT: 15454 --

MR. McAVOY: If you go to the 10th or 12th line and the Court says, "Call your next witness."

THE COURT: Yes, just above that, "Call your next witness."

Go ahead, Miss Ginsberg -- Ilene -- right above my red line, the words, "Mr. Bashian" so, you go from 15441 and continue on until you find the next red line and I have taken mine apart to make it easier for you to read that portion.

Go ahead.

(Record read as indicated to page 15446.)

THE COURT: Ilene, on the page you just turned --

what page was that? C 755

THE REPORTER: 15445, your Honor.

THE COURT: While you were reading it you seemed to turn to ask a question.

THE REPORTER: There is a typographical error on page 15445, your Honor.

THE COURT: Read it exactly as transcribed.

THE REPORTER: Yes, sir.

(Whereupon, the transcript was reread and read as follows:)

"With respect to the property at 308 Warren Street on August 9, 1968, the date of the GHA financing of 308 Warren Street" --

THE COURT: All right. You may continue.

(Reading of the record continues:)

THE REPORTER: May I show this to your Honor? Page 15447.

THE COURT: Yes.

(Transcript handed to Court.)

THE COURT: Yes. There's apparently a numeral missing. There's a dollar sign, a comma and 540.

Do you have your original notes on that?

MR. De PETRIS: It is typed up. I can get it but I don't think it is necessary. I think we can go on.

THE COURT: We will continue and if it becomes necessary to have the exact amount -- because apparently that isn't the amount, the amount as it reads on the transcript, and if you can get it Gayle in the interim, I'd appreciate it and then I'll refer to it when Ilene has finished but as it appears now it would be "$,540 and that the second mortgage was assigned by Crown Operating."

All right, you may continue.

(Reading of the record continued.)

THE COURT: That completes your request on Court Exhibit No. 29 and then I have your note which we marked as Court Exhibit No. 30:

"Jury requests:

"1968 and/or 1969 Review Boards (Gang-Bang Committee's) report for the Hicksville office."

If you recall, that was quite a large report and the parts of it that were taken from it and received into evidence are in two parts; one marked E-I in Evidence -- E-I-1 in Evidence and the other, Government's Exhibit 252 in Evidence and those will be given to you and then the last is the chart showing Mr. Cronin's use of CUP for Eastern and others.

That chart is marked Government's Exhibit No. 234 in Evidence and, also if you wish -- and I'm going

to send it in to you -- is the draft which, if you recall, I referred you to in my charge. I referred to the charge 234 and the draft 234-A in Evidence and those two will be given to you and that takes care of Court Exhibit No. 30.

Now, I want you to know that -- I might preface it by the question -- were you satisfied with the answer we gave you to your request yesterday afternoon, and if you were, O.K. If you were not, you can send back any particular further request that you want and I'll leave that to you.

Again, anything we read to you from the record or anything concerning my charge, if it is read to you and you feel, after going back that you want it re-read for a particular purpose, don't hesitate to ask for that and we'll do that, too.

You may now go back and continue your deliberations.

(Jury excused for further deliberations at 12 o'clock noon.)

MR. LASHLEY: May I look at two exhibits before the Marshals take them?

THE COURT: Yes.

MR. LASHLEY: 27 and 77.

MR. ACCETTA: For purposes of form I ask that

the envelope in which I-H is contained be excluded.

THE COURT: Let me see it.

(Envelope handed to Court.)

THE COURT: It is marked I-H, anyway. I should only send in the I-H.

Mr. Obermaier, I'm taking the I-H out of that envelope because there's additional writing on it and I am just sending in I-H.

MR. OBERMAIER: Sounds reasonable.

MR. WALL: Will we be informed when the jury is going to have lunch?

THE COURT: I ordered the lunch to be brought in between 12 and 12:15 so I suggest you get lunch now.

THE CLERK: The lunch is here.

MR. M. KLEIN: At this time I most respectfully and reluctantly ask for the withdrawal of a juror and move for a mistrial.

Your Honor, this was an effort by the Government to get the 161 series checks before the jury because 161-D has written in pencil the letters "P" and "L" and the Government will hope that the jury will forget that Kapraki testified on page 4565 that she wrote those letters when the check was returned to her from the bank.

I submit the jurors request was crystal clear. They wanted the checks given by Cardona to Abad and not the 161 checks given by Kapraki -- not the 161 series checks given by Kapraki to Cardona and never given to Abad.

We asked which checks were wanted. The Foreman conferred with Juror No. 2 and then later he said, "It has been suggested that we take both sets of checks," and I submit it was suggested by your Honor's remarks and I suggest your Honor's remarks were highly prejudicial.

MR. De PETRIS: The request was unclear and that's shown by the reaction of the jury.

The Foreman had to confer with No. 2 juror and one of the other jurors indicated they wanted both and then all the jurors indicated they wanted both.

So, the original suggestion the Government made that the request was unclear is confirmed.

I think the record will indicate that I looked to the jury and the jury unanimously indicated that they wanted two sets.

MR. H. KLEIN: I take exception to that remark.

THE COURT: I started the discussion with regard to the checks because it was unclear to me and if it is unclear to me I have a right to ask the jury

to clarify.

MR. M. KLEIN: I ask that 4565 be read to the jury to clarify when the letters "P" and "L" were written on the checks.

THE COURT: I will only do that if the jury asks for it but I will not do it at your request.

MR. M. KLEIN: The Judge did so at the Government's request.

THE COURT: You are overruled and your motion for a dismissal is denied.

Mr. Obermaier, your previous request is denied.

MR. De PETRIS: I have the typewritten copy and the missing digit is "4" -- 4,540. If you want, we can use this sheet --

THE COURT: Well, as to that sheet, there was colloquy and discussion in between --

MR. ACCETTA: I was just wondering should we have that? We might agree to use it if it is just for those portions.

MR. De PETRIS: Yes.

THE COURT: If it becomes necessary, we shall do it. In the meantime -- lunch -- one hour.

(Continued on next page.)

fols.

(Time noted: 3:37 pm.)

THE COURT: At 3:25 I received the following note from the jury which I will mark Court Exhibit 31. It reads as follows: "The jury has reached a verdict on all counts involving one of the named defendants." I don't know who it is but we will find out.

Mr. Marshal, will you bring the jury in, please.

(The jury is in the jury box.)

THE COURT: Ladies and gentlemen of the jury, I received your note, which the Court has marked Court Wxhibit 31.

Now, may I ask Mr. Loschert, you are the foreman of the jury, as to whom did you reach a verdict? Which defendant?

THE FOREMAN: Joseph Jankowitz.

THE COURT: Mr. Jankowitz, will you please rise and face the jury.

That will be Counts 1, 30 and 34.

Mr. Clerk, will you please ask the appropriate questions of Mr. Loschert starting with Count 1.

THE CLERK: Mr. Foreman and ladies and gentlemen of the jury, you say you have reached a verdict on the defendant Joseph Jankowitz. How do you find the defendant Joseph Jankowitz as to Count 1?

THE FOREMAN: Not guilty.

THE CLERK: How do you find the defendant Joseph Jankowitz as to Count 30?

THE FOREMAN: Not guilty.

THE CLERK: How do you find the defendant Joseph Jankowitz as to Count 34?

THE FOREMAN: Not guilty.

THE COURT: Just a minute. Any more outbursts like that and they will be taken care of.

You say you find the defendant Joseph Jankowitz not guilty on 1, 30, and 34?

THE FOREMAN: That is right.

THE COURT: And so say you all? Is that a unanimous verdict by all?

You are excused and you may continue with your deliberation.

(The jury left the courtroom.)

THE COURT: You have heard the verdict of the jury. I assume the defendant certainly has no motions to make. Has the Government anything to say?

MR. ACCETTA: No.

THE COURT: Mr. Jankowitz, you are discharged.

MR. LASHLEY: Thank you, your Honor.

THE COURT: If he wishes to stay, of course he is welcome. But he may leave if he wishes.

If there is any bail it will be discharged.

(A recess taken at this time.)

(continued next page)

(Jury entered Jury Box at 5:25 p.m.)

THE COURT: I'm sure the Jury will be interested in my reading this note I received which the Court marked Court Exhibit 32.

"The Jury is ready to recess for the day."

I think they certainly are entitled to it and the only reason I brought you back in is to remind you again -- as it is my duty to do -- to remind you of the admonition and your oath, especially now that you are in the process of deliberating.

You are going home now -- stop talking about this case until you get back together again tomorrow morning and don't let anyone approach you and try to avoid newspaper or other media information which I'm sure will begin to dribble out as we proceed during the course of these deliberations. You get all kinds of analyses as to why this or that happened. So, please don't get involved in anything and if anyone approaches you, please make it your first order of business to tell me.

Tomorrow morning, come back at 10:00 o'clock and as soon as Mr. Giusti tells me that you are assembled tomorrow morning and are ready to begin your deliberations, you will do so without being brought back here.

Mr. Leary, the Marshal, will be with you until you leave the building.

MARSHAL LEARY: Everybody remain in the Courtroom until I come back.

THE COURT: Those are Court orders.

MARSHAL LEARY: Let's go.

THE COURT: You will find he is a very fine fellow.

(Jury excused for the day at 5:30 p.m.)

THE COURT: All the Court's exhibits, except for the two that are being used for the Jury's purpose, will be kept by Mr. Giusti.

THE CLERK: The checks and the other exhibit, IH and the 263 -- you know -- that Government exhibit.

THE COURT: Oh, the report of that committee.

THE CLERK: That's in that envelope with the checks.

THE COURT: And the instructions --

THE CLERK: From Dun & Bradstreet.

THE COURT: That's OK.

They're in that envelope in the hands of the Marshal. The other files and charts and handbook and manual will be in Mr. Giusti's possession.

We are in recess until tomorrow morning.

Before I leave, I was thinking, after the first

verdict, that the verdict, of course, responds to the counts as numbered in the redacted indictment and I think that when the judgment of acquittal as to that defendant is prepared, I think it is proper that I go back to the original numbers and the original indictment or is there any --

MR. SOVIERO: Mr. Lashley is not here.

MR. BRODSKY: What difference does it make? He is acquitted -- period.

THE COURT: I know, but I don't know what the others will be and there were severed counts in the redacted indictment.

MR. BRODSKY: You can mention both of them.

THE COURT: I will, but I want you to know I have to make some mention of the judgment that will be prepared to each defendant because that will become important if there is any proceeding beyond this.

We are in recess until tomorrow morning.

MR. BRODSKY: The Marshal said nobody leave until he comes back.

THE COURT: No. We'll just give him enough time to get out.

Are they down in the elevator already?

THE MARSHAL: I don't believe so.

THE COURT: Will you let us know when they are

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off the floor and down in the elevator?

THE MARSHAL: They're down, your Honor.

THE COURT: OK.

Good night everybody.

* * * * * *

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21673

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
JUL 5 1974
TIME A.M.
P.M.

UNITED STATES OF AMERICA,

-against-

HARRY BERNSTEIN, ROSE BERNSTEIN, EASTERN SERVICE CORPORATION, HERBERT CRONIN, FLORENCE BEHAR, DUN & BRADSTREET, ARTHUR PRESCOTT, MELVIN CARDONA, JOSEPH JANKOWITZ,

Defendants.

72-Cr-587

United States Courthouse
Brooklyn, New York

June 19, 1974

B e f o r e:

HONORABLE ANTHONY J. TRAVIA, U.S.D.J.

and a Jury

GENE RUDOLPH
OFFICIAL COURT REPORTER

137

Appearances:

DAVID G. TRAGER, ESQ.,
United States Attorney
for the Eastern District of New York

BY: ANTHONY ACCETTA, ESQ.,
RONALD DePETRIS, ESQ.,
-and-
GEORGE BASHIAN, ESQ.,
Assistant United States Attorney

ABRAHAM BRODSKY, ESQ.,
Attorney for Harry Bernstein

JOSEPH P. SOVIERO, JR., ESQ.,
Attorney for Rose Bernstein
-and-
LOUIS BERNSTEIN, ESQ.

ANDREW T. McEVOY, ESQ.,
Attorney for Eastern Service Corporation

BODELL, GROSS & McGOVERN, ESQS.,
Attorneys for Herbert Cronin

BY: LOUIS MARTINE, ESQ.,
Of Counsel

RICHARD I. ROSENKRANZ,
Attorney for Florence Behar

(continued next page.)

Appearances: (Cont.)

WHITE & CASE, ESQS.,
Attorneys for Dun & Bradstreet

BY: OTTO G. OBERMAIER, ESQ.,
-and-
JOHN McAVOY, ESQ.,
Of Counsel
-and-
LINDA WERTHEIM, Assistant

PATRICK WALL, ESQ.,
Attorney for Arthur Prescott

IRVING J. KLEIN, ESQ.,
Attorney for Melvin Cardona

BY: MICHAEL R. KLEIN, ESQ.,
Of Counsel

BOOTH, LIPTON & LIPTON, ESQS.,
Attorneys for Joseph Jankowitz

BY: ALLEN LASHLEY, ESQ.,
Of Counsel

C 770

(Time noted: 11:17 AM.)

THE COURT: One of the reasons for the delay in commencing this morning is the fact that one of our jurors was unavoidably delayed and is now present so that the jury is together. I have not ordered them to begin their deliberations as we had understood because I heard this morning that both Mr. Brodsky and Mr. Obermaier wish to make some motions, therefore I felt I would not ask them to begin their deliberations until those motions were taken up.

I think Mr. Brodsky asked first.

MR. BRODSKY: Mine is a very simple one.

THE COURT: It makes no difference who goes first.

MR. BRODSKY. Mine is very simple.

THE COURT. All right, Mr. Brodsky.

MR. BRODSKY: If your Honor pleases --

THE COURT: Is everybody present? Yes.

MR. BRODSKY: Except Mr. Lashley, he is not here.

THE COURT: Yes.

MR. BRODSKY: In view of the jury's acquittal of the defendant Joseph Jankowitz as to Count 30 and Count 34 of the indictment, I am going to ask your Honor to instruct the jury at this time that they are no longer to consider Counts 29 and 33 since those

counts are no longer viable in view of the verdict and your Honor's instructions to the jury under Title 2, aiding and abetting, which your Honor will find on page 21483 of the transcript --

THE COURT: First of all, Mr. Accetta, I think you ought to hear this.

MR. ACCETTA: I object to such an application.

THE COURT: Mr. Jankowitz was cleared on 30 and 34?

MR. BRODSKY: I am asking you to instruct the jury not to deliberate on Counts 29 and 33.

THE COURT: 29 and 33?

MR. BRODSKY: Yes.

THE COURT: On what basis?

MR. BRODSKY: On a basis of page 21483 of the transcript as your Honor explained to them aiding and abetting.

THE COURT: Now --

MR. ACCETTA: Your Honor, I object to the application on the grounds that the elements of proof required under the aiding and abetting are not the same as the element of proof required under the bribe receiving. This jury still may find a bribe was paid with the requisite intent by Mrs. Kapraki. The fact they found that the bribe was not received with the

requisite intent or whatever else they found, if they found the bribe was paid at all, does not necessarily mean that the bribe-giving element cannot be established by the evidence in this case. And on those grounds I would object to Mr. Brodsky's application.

THE COURT: Additionally --

MR. BRODSKY: Let me continue.

THE COURT: Additionally, the jury has these counts before them. They involve other defendants. I think they have a right to consider, and I'm sure they are not forgetting their consideration of the factors that went into their finding of not guilty as far as Joseph Jankowitz was concerned, so I think they know what they are doing and I think I am going to leave it to them.

MR. BRODSKY: Your Honor specifically said you can't leave it to them. You said at page 21483, if you find in any particular count that a payment constituting a crime was not made, then you must acquit all those accused of aiding and abetting in that count.

THE COURT: I don't think that is inconsistent with what the jury is proposing to do. If they wanted to, they will throw that count out.

MR. BRODSKY: It isn't a question of wanting, they must.

MR. ACCETTA: Under the instruction your Honor gave, this jury can still find that a bribe was paid by Mrs. Kapracki with the intention of influencing and find that the defendant didn't receive it.

THE COURT: I am not going to change my charge at this time. I think it is sufficiently clear.

Motion is denied.

MR. BRODSKY: Respectfully except.

THE COURT: Yes sir.

Now, Mr. Obermaier.

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To
Page 21690
Sealed by Order of Judge Stevens

THE COURT: On the record again. Call the jury in. I might advise the people in the courtroom to keep their mouth shut and don't tell anybody anything because apparently some things are put in the newspapers and they can only come from someone other than me, I can tell you.

(The jury is in the jury box.)

THE COURT: Good morning, ladies and gentlemen of the jury. For the record, and I'm sure the other jurors are cognizant of what I am about to say, Juror No. 9, Miss Pat Sciacca, experienced a very unfortunate occurrence during the night. I believe one of her grandparents passed away and of course it became necessary for her to do something at home which would relieve her parents to immediately do what was necessary and required of them for their parents.

I don't know who it was --

JUROR NO. 9: My mother's father.

THE COURT: So that they of course were required to do something. As a result Miss Sciacca this morning was delayed. She contacted me and I asked her if there was no necessity for her to be home today at least I would appreciate her coming in and she did. I am going to excuse her early this afternoon. That means having to excuse the entire jury early this

afternoon, to give her an opportunity to do whatever else she has to do this afternoon. As far as today is concerned we will recess at 4:00 o'clock instead of 5:30.

Now, Miss Sciacca, if I may ask you about tomorrow, can you be in tomorrow?

JUROR NO. 9: Yes.

THE COURT: Have any arrangements been made for the funeral?

JUROR NO. 9: Not yet.

THE COURT: You can let me know that tomorrow. Being one of Italian extraction myself, and I always love to say I am an American right down to the core, but being of Italian extraction, which I am proud of, I realize that occurrences such as this are not taken lightly. At least by those of Italian extraction or those who are Italian. So I will of course cooperate to the extent that we can in seeing to it that you can do whatever you have to do. So that I will ask you again about whatever arrangements have been made, and if it requires your presence for any particular part, on Friday we will make arrangements for that too.

Will that be satisfactory? Thank you very much.

Now, while I've got you here, Mr. Loschert, do you have your memorandum of jury verdict?

THE FOREMAN: We turned it over to the marshal.

THE COURT: You still have it?

THE MARSHAL: We have it here.

THE COURT: Would you give that to Mr. Loschert. Hold it for a second because there are other things I want to talk about before I ask you to do something about that.

First of all, I want to ask you all, because before we left last night I gave you my usual admonition, but we haven't seen each other since last night, and I want to ask you a question, first of all, remember that you have given your oath respectively that you would try this case fully and fairly and I am sure you remember the contents of your oath which requires your being truthful. And I am going to ask you whether any of you has come in contact or whether or not a situation has been brought to your attention concerning any newspaper articles or any other report by any other media. If anyone has, I would like you to raise your hand.

If I see correctly, thank God I have pretty good eyes, I see no hands up so I assume that none of you have had any contact with anything.

The next thing I want to take up, and this will require Mr. Loschert and other ladies and gentlemen

of the jury, open that envelope and take out what I had referred to during my charge as the memorandum of verdict.

Have you got it? There is a lot more in there, they threw in all the pencils and papers and some other exhibits. Look at the nice fat one. That looks like it. Do you have it?

THE FOREMAN: Yes.

THE COURT: Would you give that back to Mr. Loschert.

Yesterday, I believe it was yesterday, when you on behalf of the jury announced the verdict of the jury with respect to Mr. Jankowitz. Mr. uisti in his haste did not ask you for your complete verdict. If I recall correctly you were asked with regard to Mr. Jankowitz's guilt on Counts 1, 30, and 34. As to Counts 30 and 34, if you will look first at Count 30 --

THE FOREMAN: Yes.

THE COURT: The bottom section or at the lower section of that page there is a statement, the lesser included charge --

THE FOREMAN: Lesser included offense.

THE COURT: Mr. Guisti, will you ask the questions as to that lesser included charge which is 201G?

THE FOREMAN: Right.

THE COURT: Count 30.

THE CLERK: Mr. Loschert and ladies and gentlemen of the jury, yesterday you gave me a verdict on Count 30 of not guilty on Count 30. On the lesser count, Title 18, United States Code 201G, how do you find the defendant Joseph Jankowitz on that count?

THE FOREMAN: Not guilty.

THE COURT: Now go to 34.

So say you all?

THE FOREMAN: Yes.

THE COURT: I assume from looking at you and you're all nodding your heads in approval, that is your unanimous verdict?

THE FOREMAN: Yes.

THE COURT: Go to 34.

THE CLERK: Mr. Loschert, yesterday you gave us a verdict of Joseph Jankowitz being not guilty as to Count 34. As to the lesser included offense, Title 18, 201G, how do you find the defendant Joseph Jankowitz?

THE FOREMAN: Not guilty.

THE COURT: So say you all. It is a unanimous verdict from looking at each one of you.

THE FOREMAN: Yes sir.

THE COURT: Now, Mr. Marshal, would you see to it that all the exhibits that we took last night go back to the jury room and Mr. Loschert, you have the rest of everything. Whatever else is in there, I don't know.

You may continue your deliberations.

(The jury left the courtroom.)

THE COURT: Okay, we will stay at ease as usual.

MR. BRODSKY: If your Honor pleases, in view of the fact that the jury has now announced that he was acquitted on the gratuity count, that indicates no money was passed at all. I therefore renew my motion.

THE COURT: I don't know what that verdict means except what the jury has just told me. I am not going to try to guess what determination they made. All I know is they returned a verdict of not guilty as to the main count and minor count and I will not try to interpret what it means other than that.

The reference to Counts 29 and 33, particularly the motion that you made before, is still denied.

MR. BRODSKY: I still except.

THE COURT: Yes sir, I appreciate that.

MR. McEVOY: May I ask what the Court's plans are with respect to lunch?

THE COURT: It is almost 12:00. They wanted to

eat at 1:00 o'clock.

MR. McEVOY: May we consider ourselves free between 1:00 and 2:00?

THE COURT: Yes. I had told Tony this morning to do the usual. If they want to eat at 1:00 --

MR. ACCETTA: Will the jury be going out to the park or anything like that?

THE COURT: If the marshal asks my permission, at the request of the jury to go out for a walk, I am not going to object. Yesterday I might say for the record, when I permitted them to take that walk in the park they happened to take a walk in the so-called Red Cross Plaza and they were right outside my window and I can tell you the two marshals had them in one bunch with nobody in sight of them. I was able to view firsthand. I dare anybody get near Mr. Leery anyway.

Stand at ease.

(A recess taken at this time.)

(continued next page)

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(Time noted: 12:55 PM.)

THE COURT: Just a few minutes ago I received a note from the jury which I shall mark Court Exhibit No. 33, which reads as follows: "The jury requests reading of the portion of the charge regarding aiding and abetting in the commission of a crime particularly regarding Counts 33 and 35."

I see I have another one. Just handed to me is a note which we will mark Court Exhibit 34 which reads as follows: "The jury requests reading of Ortrud Kapracki's testimony regarding Counts 33 and 35."

Since they are going to eat at 1:00, I am wondering if I am going to have them go to lunch and then return --

MR. BRODSKY: When they say testimony, direct and cross?

THE COURT: It doesn't say so.

MR. BRODSKY: Testimony.

THE COURT: It doesn't say so and I am going to ask that before I release them so I will know what we have to look for in the interim.

MR. SOVIERO: I respectfully except to your asking whether they want direct and cross. Since they ask for testimony we should read direct and cross.

MR. DE PETRIS: As relates to these counts.

THE COURT: I don't mind. We will take the time to find the exact portion of the record, that would be Kapraki's testimony with regard to 33 and 35. And that's all the testimony. I direct the cross by any defense attorney who cross-examined her with to any of those counts and if there was any redirect. I don't recall. As far as the charge is concerned regarding aiding and abetting, I believe you will find by looking at the transcript for that part of my charge regarding the 201B1 charges in aiding and abetting begins -- not the 201, that was the previous, but insofar as the aiding and abetting count begins on 21461. And that part was left over to Monday from Friday --

MC EVOY: I ask you to consider going thoroughly in the transcript to the point at which Mr. Brodsky made reference, 21438.

THE COURT: What is that?

MC EVOY: I would ask you to consider going through earlier portions of the transcript. Mr. Brodsky made reference to a 21438 where you also spoke about aiding and abetting.

THE COURT: Mr. Brodsky spoke about it? They are only asking for the charge.

MC EVOY: Mr. Brodsky made reference to a portion

of your Honor's charge. The subject matter was aiding and abetting.

THE COURT: What page?

MR. BRODSKY: 21483.

MR. MC EVOY: Then I misspoke.

THE COURT: The request is the charge with respect to aiding and abetting beginning 21461. And I have not ascertained what the last page is yet.

MR. MC EVOY: Fine.

THE COURT: We can talk about that when the time comes. Tell them to have their lunch first and after lunch we will -- do you mind if I have that done by Mr. Guisti and the marshals? Ask the jury if they want to have their lunch first and wait until after lunch so that I can read the portions of the testimony they want to them. Ask them if that is okay.

THE MARSHAL: They are discussing it and they will let me know.

THE COURT: They will let him know.

MR. BRODSKY: They are going to take a vote on that too.

MR. DE PETRIS: I would point out to the Court that apparently a part of the charge they want --

THE COURT: I wish when somebody is speaking for the record that I wouldn't have competition.

MR. DE PETRIS: Apparently, the part of the charge is the part that Mr. McEvoy spoke about beginning at 21481, which is aiding and abetting relating to bribery. 21461, aiding and abetting, as it relates to false statements. Apparently they don't want it read at this time. Well, it is unclear. It might not be necessary to read both parts.

THE COURT: They are dealing with 201, they zeroed in specifically on Counts 33 and 35, both of which are 201 bribery counts. Does that meet with your approval --

MR. SOVIERO: Yes, your Honor.

THE COURT: We will start at --

MR. DE PETRIS: 21481. I believe it goes through 488, they get to the part of the lesser included offense.

THE COURT: I haven't got mine in front of me.

THE MARSHAL: Your Honor, they would rather have their lunch first.

THE COURT: That is agreeable with us too.

MR. BRODSKY: Tell them it is unanimous.

THE COURT: Don't tell them anything. Let them continue without disturbing them. They gave me their answer.

THE MARSHAL: They would like the walk too.

THE COURT: We told them they could have that.

THE MARSHAL: I will make arrangements.

THE COURT: Don't take them for a walk anywhere--

THE MARSHAL: No, we will be right here.

THE COURT: Like yesterday. After they have their lunch they may do that.

MR. BRODSKY: Take them across the Brooklyn Bridge and back.

THE COURT: We will recess for lunch.

(A recess taken at this time until 2:00 PM this afternoon.)

(continued next page)

AFTERNOON SESSION

MR. ACCETTA: With respect to the jury's request for the reading of the transcript with regard to Counts 33 and 35, a review of the transcript first with respect to Count 33 at page 5181, line 17 -- there is a reference to "he go" and upon examination of the court reporter's notes and as a result of consultation with defense counsel, we are all agreed that should read "e.g."

THE COURT: Would you get me my copy?

MR. ACCETTA: 5181.

MR. MC EVOY: November 27th.

THE COURT: Everything is on that day? If we are going to read testimony we should --

MR. ACCETTA: Page 5199, line 16, there is a reference to a conversation with a Rosemary. I have spoken with Mr. Soviero on that one and Mr. Soviero consents to changing that to Rose Bernstein.

On the same page, there is a minor one, referring to a "filed report." I believe it should be a"field report."

THE COURT: Do you have what line that is?

MR. MC EVOY: Line 24.

MR. ACCETTA: 5199, that is line 23 and also 5200, lines 3 and 8. Those are the references to

"filed report" instead of "field report."

THE COURT: The pages we will then read to satisfy the first request is the portion of the charge regarding aiding and abetting. And I think we indicated that we would begin with page 21481.

MR. MC EVOY: Line 20, I believe.

THE COURT: 481, line 20, right.

MR. MC EVOY: My recommendation is concluding at 21484.

THE COURT: I was going to suggest that.

MR. MC EVOY: Line 13 or 12.

THE COURT: I would go to line about 13 or 14, ending with "in achieving her goal." And "you heard me mention certain words which I should define," just before that. I think it is line 13.

MR. MC EVOY: For me, either line 9 which includes the definition or line 13.

THE COURT: I think 13. Is that what you would like? Did you hear what I said?

MR. ACCETTA: Yes.

THE COURT: Is that all right? 21481 to and including 21484, line 13.

MR. ACCETTA: Agreed.

THE COURT: The second note is the testimony of Mrs. Kapraki. Has there been any determination

between you since I think it does involve all of the testimony -- not all of her testimony -- but all including cross-examination as to those two counts. Otherwise it would take three months to read.

MR. MC EVOY: At least for my client, the entire recess was consumed examining the records to determine the page on which the subject matter appeared. I haven't had a chance to talk to Mr. Accetta.

THE COURT: Do you suggest I tell them we are trying to find those parts?

MR. ACCETTA: I was able to find only one place. I stopped with Mr. Rosenkranz's testimony. I was able to find Mr. Lashley's cross-examination in the record. I am not aware or don't recollect whether there was any other cross-examination concerning those two counts.

MR. MC EVOY: At all events --

THE COURT: I would be inclined to believe, in view of the request where they say 33 and 35, it had to do with 201 counts.

MR. MC EVOY: In a quick survey of Mr. Brodsky's inquiry with respect to the construction bills on Albemarle Road and the fact that they were phony which I found in the transcript in the 5500 or 5600 series --

THE COURT: Does that deal with the bribery count?

MR. BRODSKY: The testimony was --

THE COURT: You are going to get involved with the --

MR. BASHIAN: Your Honor, excuse me. That testimony goes to the credibility of Kapraki. What we might want to do is read the direct examination and ask the jury if they want anything else read.

MR. BRODSKY: Isn't that lovely.

MR. BASHIAN: I think it would be lovely if they say they don't.

MR. MARTINE: Why not read the cross and if they want any more then read the direct?

THE COURT: That would be, from what I gather thus far, zero.

MR. SOVIERO: Mr. Lashley's cross is on the --

THE COURT: We will take that if that is what you want.

MR. MC EVOY: As I understand the note, Court Exhibit 34, the jury requested the reading of Mrs. Kapraki's testimony regarding counts 33 and 35.

THE COURT: I would read that to mean all testimony, especially since in my charge I say that in considering the evidence you must always consider

that which was elicited on cross examination as well as direct examination. So I think testimony is testimony regardless of when it was given.

MR. MC EVOY: It is certainly in the cross-examination with respect to 2503 Albemarle Road.

THE COURT: 2503 Albemarle Road doesn't refer to that count.

MR. MC EVOY: Count 35. At least in my copy of the indictment it does.

THE COURT: I am not looking at it at the present time.

MR. MC EVOY: That seems to me what the jury is talking about.

THE COURT: The jury knows what to say. I heard them say "Judge, that's all we want to hear." They just want to get some particular parts of the testimony.

MR. MC EVOY: I am wondering, since the time of Court Exhibit 34 came so close to the heels of 33 --

THE COURT: It was about 1:00 o'clock.

MR. MC EVOY: Whether 34 is in some relation to 33 and perhaps reading them a reading of the charge may satisfy both inquiries.

THE COURT: Even though they came out, as you say, one on the heels of the other, it says the jury

requests reading of Ortrud Kapraki's testimony with regard to counts 33 and 35. In other words, reminding me of the same two counts.

MR. MC EVOY: If what I gather with respect to the direct testimony on those two subject properties, you are talking about pretty close to 100 pages on direct.

On direct, 211 53rd Street, 5072, and 5129 -- 2503 Albemarle Road, 5175 to 5205 -- that is 75 pages. That as your Honor knows takes a little longer to read than to --

THE COURT: And I promised I would adjourn at 4:00 o'clock.

MR. MC EVOY: You may not even conclude the reading of the testimony.

THE COURT: Unless we handle 33, request 33, and then tell them that we will gather the information since we have to go over much of the transcript, and we will read that at the first opportunity.

MR. MC EVOY: Or in the alternative, what I suggested earlier, you can say: Having heard my charge is it nonetheless your desire to hear the --

THE COURT: I could do that if you have no objection. I would prefer to honor each request as it comes in.

MR. ACCETTA: The span of pages that Mr. McEvoy cites may well involve 211 53rd Street. The portion having to do with the bribery count 33, 5115 to 5121, is only 7 or 8 pages. The other testimony with respect to false statement counts are approximately 8 --

THE COURT: That is not the way we are going to--

MR. ACCETTA: I understand that, but I am saying what Mr. McEvoy said --

THE COURT: All they want is the testimony regarding counts 33 and 35. The false statement counts are not 33 and 35.

MR. ACCETTA: With respect to count 33, it is only seven pages of testimony, approximately.

THE COURT: The only thing we are not agreed upon was cross-examination, that was if there was any.

MR. ACCETTA: Cross-examination of Mr. Lashley is here. And if defense counsel who have cross-examined haven't been able to find it, I don't think there is any.

THE COURT: I don't know if any one of them is prepared to say. Is there anyone here who -- I am sure the lawyers would remember it -- cross-examined with regard to those?

MR. ACCETTA: It's been two hours since we got the request.

THE COURT: Mr. Klein?

MR. KLEIN: I didn't. My client is not involved in the --

THE COURT: You didn't cross-examine?

MR. KLEIN: Not as to those two counts.

THE COURT: Mr. Rosenkranz?

MR. ROSENKRANZ: I did not cross-examine specifically to those two counts.

MR. MARTINE: I know I did not.

THE COURT: Mr. Obermaier, I am sure didn't. He was only interested in the others.

Mr. Wall, I don't think you did.

MR. WALL: I did not.

THE COURT: So that it would have to zero in on the three of you, Mr. Brodsky, Mr. Soviero and Mr. McEvoy.

MR. BRODSKY: My examination was a general one and not a specific one.

THE COURT: We can't find any cross-examination, therefore it just leaves Mr. Soviero and Mr. McEvoy. And Mr. Lashley, of course.

MR. DE PETRIS: We have Mr. Lashley's.

MR. MC EVOY: I did not examine Mrs. Kapraki.

THE COURT: That leaves you, Mr. Soviero.

MR. SOVIERO: It was one portion of my cross-examination where I alluded to certain bills in the

file. I don't recall whether it pertains to these properties or not. There was a question of 2503 Albemarle Road, I believe. I asked her repeatedly about these A. Frommann bills, and I asked her to produce the underlying bills in the files that had to do with A. Frommann, which had to do with the general credibility, if it please the Court.

THE COURT: They are asking for these two counts insofar as the 201B is concerned.

MR. SOVIERO: They asked for all the testimony concerning these two counts.

THE COURT: You find it. It is your cross-examination.

MR. SOVIERO: I would be happy to.

THE COURT: If you find it, I will let you know if it can be read.

MR. DE PETRIS: I don't see how the cross-examination as to the bill relates to the two counts.

THE COURT: I don't either.

MR. DE PETRIS: After Mr. Lashley's cross the Court can ask the jury if there is anything else.

THE COURT: Yes. Give me the date of that.

MR. ACCETTA: November 26th.

THE COURT: November 26th?

MR. MC EVOY: 211 53rd Street.

THE COURT: The 26th. Would you get me the minutes of November 26th.

MR. ACCETTA: Do you want the page reference?

THE COURT: Give me the page reference. Are they all in that one?

MR. ACCETTA: The next one is the 27th.

THE COURT: I've got that here. Get me the 26th, November 26th.

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MR. BRODSKY: If you look at Page 5611, referring to 2503 --

THE COURT: That is the following --

MR. BRODSKY: You remember, it was when we questioned her as to when she met Goodwin. You asked her if that was the first time you ever met --

THE COURT: Do you want me to say I remember that?

MR. BRODSKY: I should imagine you would remember that.

THE COURT: I've got a pretty good memory but I think I would like to see it.

MR. BRODSKY: I quoted you in my summation, your Honor.

THE COURT: That is all right.

MR. BRODSKY: It still doesn't refresh your recollection?

THE COURT: No sir.

MR. BRODSKY: If you look at 5612: Do you remember Mrs. Kapraki, the Judge asking you certain questions on Tuesday of this week with respect to when you met Mr. Goodwin for the first time? Answer: The Judge asked me that? I don't recall that. Did you?

And then The Court: You have the record, if I asked her a question refer to the record. May I

have the transcript of January 27, 1969 with reference to 2503 Albermarle Road. And then Mr. De Petris said something, everybody gets into this: What is the date? Mr. Brodsky: November 27th. The Court: Page? Mr. Brodsky: I didn't write down the page, I am going to read it verbatim. The Court: Go ahead.

THE COURT: You are saying this?

MR. BRODSKY: I didn't say --

THE COURT: What you are reading now is what you read, not what I said.

MR. BRODSKY: Be patient. I didn't answer the question, I copped the Fifth.

And then, Mr. Brodsky: Before you go on, Mrs. Kapraki, would this be the first occasion you had anything to do with Mr. Goodwin? The Witness: I don't recall. I think I seen him before. The Court: So that when he drove up that morning you knew who he was? The Witness: Yes. The Court: All right.

THE COURT: That was you reading.

MR. BRODSKY: Reading what you said.

THE COURT: From another transcript.

MR. BRODSKY: Then I questioned.

THE COURT: That wasn't the first time she met him. When she saw him that day she knew who he was.

MR. BRODSKY: I went on to question her about other matters, all in reference to 2503.

THE COURT: It's not what you said at the start. That was not the first time she met him.

MR. BRODSKY: She said it was the first time. Then you asked her --

MR. ACCETTA: She never said that.

THE COURT: I don't follow it that way at all. What is the purpose --

MR. BRODSKY: Go back to 2611.

THE COURT: What is the purpose of this?

MR. BRODSKY: Part of the examination read to the jury in answer to this question about Albermarle Road.

THE COURT: They didn't say they wanted testimony with regard to Albermarle Road.

MR. BRODSKY: 2503, aiding and abetting.

THE COURT: You can go into your whole cross-examination.

MR. BRODSKY: Only as to Albermarle Road, Judge.

THE COURT: Find it and let's take it up. I want the exact parts --

MR. BRODSKY: Her testimony is in answer to your question.

THE COURT: Her testimony is in answer to my

question, yes, not in answer to what you said I said that she said.

MR. BRODSKY: That is true, all right.

THE COURT: All right.

MR. ACCETTA: Your Honor, the testimony with respect to Count 35, I believe begins at 5176.

THE COURT: 5176, that is direct.

MR. BRODSKY: That is direct. I am talking about my cross.

MR. ACCETTA: Have you identified it yet? I'm trying to give the page reference for the direct.

MR. BRODSKY: Be my guest. I don't care what you do with the direct.

THE COURT: 5176 beginning with Line 15?

MR. ACCETTA: Yes sir.

THE COURT: Okay.

MR. ACCETTA: Continues over to 5205, Line 10, afterwards Mr. De Petris reads from the file side bar and it begins after that.

THE COURT: To Line 10 first.

MR. ACCETTA: Then Mr. De Petris reads from the file. And there was a side bar at 5207 which continues to page --

THE COURT: All of Page 5202 is in there, is it not?

MR. ACCETTA: If that is part of Mrs. Kapraki's testimony, Mr. De Petris reading from the file, it would be.

THE COURT: It is.

MR. DE PETRIS: As to Line 22, it starts with some colloquy.

MR. ACCETTA: Colloquy that --

MR. DE PETRIS: Leads to a side bar.

THE COURT: Up to 22?

MR. ACCETTA: Through Line 22. Then it starts colloquy. And then the side bar and then the side bar ends. Top of Page 5221 where the direct continues through --

THE COURT: 5221, Mr. De Petris continues --

MR. DE PETRIS: Yes, your Honor. And continues through page 5222, Line 7. And then after that I continue with the firm commitment and closing which doesn't relate to the bribery count.

THE COURT: That was with respect to Count 35?

MR. ACCETTA: Yes.

THE COURT: How about Count 33?

MR. ACCETTA: I believe we gave them.

THE COURT: May I have them again?

MR. ACCETTA: 5114 --

THE COURT: Oh yes. 5114 --

MR. ACCETTA: LIne 12 through Page 51 --

THE COURT: I now show you the application for initial commitment --

MR. ACCETTA: Yes.

THE COURT: Through?

MR. ACCETTA: 5121 -- actually 5120 when Mr. Jankowitz leaves, to LIne 23.

THE COURT: Then Mr. Jankowitz left.

MR. ACCETTA: Yes. Thereafter Mr. De Petris reads from the conditional commitment.

THE COURT: Where is that?

MR. ACCETTA: On the same page, Line 21.

THE COURT: That has to do with Exhibit 27?

MR. ACCETTA: Through LIne 13 where the value is set forth.

THE COURT: On 5120, is that where you want to stop?

MR. ACCETTA: 5121, Line 13.

THE COURT: 13 on 5121 with the answer "$16,900?"

MR. ACCETTA: Yes.

THE COURT: Okay. Where is Mr. Lashley's cross?

MR. ACCETTA: Mr. Lashley's cross is in the transcript of December 10, 1973 commencing at

Page 6396, that's where his cross-examination begins. With respect to his property, it begins at 6418, Line 13 and continues over to Page 6427 I believe. 6428.

THE COURT: Line?

MR. ACCETTA: Actually it should end at 6427 Line 22 because he goes into other property.

THE COURT: Does that -- that is with reference to what count?

MR. ACCETTA: 33.

THE COURT: And do I get you right, if you start at 6418 --

MR. ACCETTA: That is it, 6418, yes.

THE COURT: Line 13?

MR. ACCETTA: Line 13.

THE COURT: 6427, Line 22?

MR. ACCETTA: 6426, yes. Line 22.

THE COURT: Line 22, 6427. Is that right?

MR. ACCETTA: Yes sir.

THE COURT: 6427, Line 22.

MR. ACCETTA: Yes sir.

THE COURT: With the answer "I did not see it."

MR. ACCETTA: That is correct.

THE COURT: Okay.

That is Mr. Lashley's cross-examination as to

Count 33, right? No, cross-examination as to Count 35 by Mr. Lashley.

MR. ACCETTA: That is correct.

THE COURT: Now --

MR. BRODSKY: Ready for me, Judge?

THE COURT: Yes.

MR. BRODSKY: With reference to Count 35, I refer your Honor to Page 5190.

THE CLERK: What date is that transcript?

MR. BRODSKY: November 27th.

THE COURT: I should have that.

November 27th, what is the page?

MR. BRODSKY : 5190.

THE COURT: Go ahead.

MR. BRODSKY: LIne 14.

THE COURT: 14.

MR. BRODSKY: 14 through 22.

THE COURT: Do you have that?

MR. ACCETTA: That is included in the pages I gave you, I believe.

MR. BRODSKY: That is the direct examination.

THE COURT: That is included.

MR. BRODSKY: That is a part where you -- you wanted that specific part where you asked the questions. Then we go to 5611, beginning with Line 19.

That is November 29th.

THE COURT: Have you got that? Have you got that, Mr. De Petris?

MR. DE PETRIS: Yes.

THE COURT: What page is it?

MR. ACCETTA: Would the Court like to see a copy?

THE COURT: What page again?

MR. BRODSKY: 5711 beginning with Line 19. 5611, I'm sorry.

THE COURT: 5611?

MR. BRODSKY: Line 19.

"Question: Mrs. Kapraki?

"Answer: Yes.

"Question: Had you ever met Edwin Goodwin before you met Harry and Rose Bernstein?"

THE COURT: Starting with that line?

MR. BRODSKY: Yes.

THE COURT: And --

MR. BRODSKY: Continuing, except you can excise that part about --

THE COURT: Give that back to Mr. Accetta so he can follow you. I have my own copy now.

I am waiting.

MR. BRODSKY: We go through 5621 -- through

Line 16.

THE COURT: What on Page 5614 has got to do with Mrs. Kapraki?

MR. BRODSKY: What?

THE COURT: What appears on 5614 that has anything to do with Mrs. Kapraki's testimony? That is colloquy between you and me.

MR. BRODSKY: I said except for those parts which your Honor wishes to excise.

THE COURT: You've got to point out what the Court is going to read.

MR. DE PETRIS: I don't see how it relates to Count 35, your Honor.

THE COURT: I'm not going to start editing.

MR. BRODSKY: That has to do with Count 35, it is very important.

THE COURT: I am not going to include any colloquy between you and me.

MR. BRODSKY: No.

THE COURT: You go right to 5612.

MR. BRODSKY: Go to 5613, Line 14.

THE COURT: What about 5612?

MR. BRODSKY: We go to Line 9.

THE COURT: Yes? Are you following, Mr. Accetta? 5611, Line 19 through 5612 Line 9. And the rest of

that page of course is out.

MR. DE PETRIS: I don't see up to the point how it relates to Count 35.

THE COURT: I don't know. Mr. Goodwin was not --

MR. DE PETRIS: It is general testimony.

THE COURT: Right now.

MR. BRODSKY: This is not general testimony, this is specific testimony with 2503 where she meets Goodwin and she says the first time at 2503 Albermarle Road.

MR. DE PETRIS: She never said that.

MR. BRODSKY: I just read --

THE COURT: Mr. Brodsky, don't argue with him.

MR. BRODSKY: That's right. That is a waste of time.

THE COURT: 5612, right through to 5616, nothing else but conversation between you and me.

MR. BRODSKY: No, except --

THE COURT: Except what?

MR. BRODSKY: Beginning Line 5, 5616.

THE COURT: No.

MR. BRODSKY: Does this refresh your recollection as to Mrs. Kapraki --

THE COURT: On two other appraisals -- that takes it out of 35 by the way.

MR. BRODSKY: No.

THE COURT: Yes.

MR. BRODSKY: No, she said yes, I think I saw him on one or two other appraisals. This has to do with her answer with respect to 2503.

THE COURT: It does not.

MR. BRODSKY: She had met him originally --

MR. DE PETRIS: I ask Mr. Brodsky to give a page reference.

MR. BRODSKY: Don't ask me anything, let the Judge ask me.

THE COURT: I don't see where it relates to 2503.

MR. BRODSKY: Go back to 5611.

THE COURT: That is where I am. "Had you ever met Edwin Goodwin before?"

MR. BRODSKY: What did she say?

THE COURT: "No to my recollection."

What's that got to do with 2503 so far?

MR. BRODSKY: We are talking about the time she was meeting him at 2503 Albermarle Road. I asked: Had you ever met Edwin Goodwin before you met Harry and Rose Bernstein, and she said no.

MR. DE PETRIS: She testified she met Harry and Rose Bernstein in December of '68. This Count goes to

'69. The reason Mr. Brodsky brought it out in the first place was he was referring to the bribe which allegedly took place in JUne of 1968 that they had not met before that time and paid him before. That does not relate to 2503 Albermarle Road.

MR. BRODSKY: Let me tell you, my point is that they say --

THE COURT: Up to that point, we have not heard 2503 Albermarle Road. That's what I wanted to say.

MR. ACCETTA: Mr. Brodsky's whole inquiry --

MR. BRODSKY: Will you let me look and stop talking?

MR. ACCETTA: I wasn't addressing you, sir, I was addressing the Court.

THE COURT: Let him look.

(Pause.)

(Continued on next page)

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MR. BRODSKY: These questions were leading up to 2503 when I asked on line 13 -- begins on line 6:

"Do you remember, Mrs. Kapraki, the Judge asking you certain questions on Tuesday of this week with respect to when you met Mr. Goodwin for the first time?"

THE COURT: What page is that?

MR. BRODSKY: 5612, I said, Judge, beginning line 6.

THE COURT: Yes.

MR. BRODSKY: "Answer: The Judge asked me that? I don't recall that. You did?"

And then I asked, at line 13:

"MR. BRODSKY:" That is my name. "May I have the transcript of January 27, 1969 with reference to 2503 Albemarle Road."

Talking about Albemarle Road.

THE COURT: You were then.

MR. BRODSKY: Exactly.

THE COURT: When you asked for the file --

MR. BRODSKY: She knew what I was talking about, too.

THE COURT: I am not deliberating on that. Go ahead.

MR. BRODSKY: Then we go into the business about whether --

THE COURT: From then on it is nothing but --

MR. BRODSKY: You asked her: "Does this refresh your recollection as to whether you had seen him before this occasion on January 29, 1969? That is 2503 Albemarle Road. January 29, 1969."

And then she says, "Yes."

And then I asked --

THE COURT: So far all I've got is 5611, a couple of questions down to 5612, a couple of questions, and one question and answer on 5616, right?

MR. BRODSKY: Right. Then I go on 5617 --

THE COURT: There you get involved in 51st Street.

MR. BRODSKY: That's right. She said -- This count has to do with Mrs. Kapraki being counseled, aided and abetted by the Bernsteins to give Goodwin a bribe. And she originally hadn't said she met him before 2503 Albemarle Road.

MR. ACCETTA: She never said that.

MR. BRODSKY: I read --

MR. DE PETRIS: That was before she met Harry and Rose Bernstein, there was six months between the

summer of '68 and January '69 in my book, Mr. Brodsky.

MR. BRODSKY: Wait a minute. In answer to your question that --

THE COURT: I didn't ask you anything. Except that leads up to --

MR. BRODSKY: Wait. Go back to 5613, before you go on Mrs. Kapraki with this first occasion you had anything to do with Mr. Goodwin -- and the witness answered, "I don't recall, I think I seen him before, I think I seen him before." That was the answer to your question with reference to 2503.

Now I want to refer back to the time she met him at 51st Street and she gave him the bribe. That was in reference to the cross-examination of 2503 to show there was no aiding and abetting by the Bernsteins because they --

THE COURT: That is a good summation, but --

MR. BRODSKY: That is the fact. It's written down here black on white.

THE COURT: I don't read it that way.

MR. BRODSKY: Maybe you don't read it that way, but I submit this should be given to the jury as part of the cross-examination relating to the count 2503 Albemarle Road, which was Count 35.

THE COURT: The most I will read as far as I can see relating to this subject is --

I still don't see 5611 -- I don't see any objection to reading from line 19 over to 5612, line 9, unless there is some real objection to it.

MR. DE PETRIS: It doesn't relate to Count 35. I have no objection if the Court wants to read on page 5613 from line 1 --

THE COURT: No, sir, 5613 has nothing but talk.

MR. ACCETTA: There are one or two questions.

THE COURT: Yes.

MR. DE PETRIS: Through line 14.

I don't have any objection to that.

THE COURT: That is all questions and answers.

MR. ACCETTA: That possibly relates to Count 35. Then there is colloquy.

THE COURT: Line 14, I think so, too.

MR. DE PETRIS: I have no objection.

MR. BRODSKY: I don't mind the colloquy provided you read back the original -- this is a repetition. I want the original, 5 --

MR. ACCETTA: That is part of the direct.

THE COURT: I am readin that.

MR. BRODSKY: Fine. O.K., fine.

THE COURT: Insofar as the part we are now talking about, I will allow to be read 5611, line 18, 5611, line 18 to 5612, line 9.

MR. ACCETTA: I don't see how that --

THE COURT: That reads right into the part that you are consenting to, 5613.

MR. DE PETRIS: 5613 does relate to Albemarle Road, but the other questions don't.

MR. ACCETTA: 5611 doesn't.

MR. DE PETRIS: "Had you ever met Mr. Goodwin before you met Harry and Rose Bernstein?" that was the summer of '68. 2503 Albemarle Road doesn't start until January '69. I don't see how a question relating to the summer of '68 relates to January '69.

5613, that does relate. Now we are talking about Albemarle Road.

THE COURT: It goes back to the same -- would this be the first-occasion question?

MR. BRODSKY: Absolutely.

THE COURT: You got your question and answer in there anyway.

5613, line 1 to line 14.

MR. BRODSKY: Line 14?

THE COURT: Yes.

MR. BRODSKY: Fine.

THE COURT: I think that is it. No, that is -- What about 5616? We are talking about that?

MR. ACCETTA: 5616, line 5 through 7, that would be all right.

THE COURT: That's what I have here. That's what I have. 5 through 7.

MR. BRODSKY: What about 5617?

THE COURT: I am coming to that. 5616, line 5 through 7, and 17. I already said no on that.

MR. DE PETRIS: That is turning to other property.

MR. BRODSKY: I am going to another property as part of my cross-examination. I said it before and I will say it again, 5617 has to do with her testimony with respect to 2503 Albemarle Road to this extent: it was her contention --

THE COURT: It starts off by talking about other appraisals.

MR. BRODSKY: It was her contention that Rose and Harry Bernstein had sent E.G. out and told her to pay $100, and in the beginning she said she didn't recollect seeing him before. Now I want to show in my cross-examination that she knew him. I want to show she had done business with him before, and therefore Harry and Rose Bernstein couldn't have--

THE COURT: Mr. Brodsky, you are not looking

at 5617 with that speech you are making. It says specifically they met once or twice before at other appraisals in connection with property. In connection with one of the houses at 51st. And then there was a question, "Did you give Mr. Goodwin a bribe in January of 1968?"

MR. BRODSKY: Exactly.

THE COURT: Which is a year before.

MR. BRODSKY: That is my point.

THE COURT: That isn't cross-examination on 35.

MR. BRODSKY: It isn't?

THE COURT: No, because the next question was, "Did you ever give Mr. Goodwin a bribe in 1968?"

MR. BRODSKY: That is right.

THE COURT: What has that got to do with Albemarle Road?

MR. BRODSKY: She said she gave the $100 to Goodwin because Rose and Harry Bernstein told her to have a hundred. And they're going to send Goodwin out. She was trying to give the jury and the Court the impression she never met Goodwin before and that she met him on 2503. And the truth was she met him a year before and she paid him a bribe.

THE COURT: I won't allow that.

MR. BRODSKY: I respectfully except. That is all.

THE COURT: You may.

MR. BRODSKY: I think it is very vital.

MR. MC AVOY: I join in that. Further, in addition --

THE COURT: Apparently -- and I want you to remember the four o'clock date -- we are not going to finish this tonight.

Let Mr. McAvoy continue.

MR. SOVIERO: I will. I was just standing here.

MR. MC AVOY: I am joining in Mr. Brodsky's exception and objection with respect to the narro circumscription of testimony to be read.

Further, I would offer to the Court in addition to the portion the Government proffered as to Mr. Lashley's cross-examination, the Court should read from 6427, line 22 through the conclusion of 6435, line 7.

Now, I kno Mr. DePetris is going to say immediately that that relates to two other properties, 316 --

THE COURT: 64?

MR. MC AVOY: 6427, line 22 to the conclusion

of Mr. Lashley's examination, which is 6435, line 7.

THE COURT: At 6427 on --

MR. MC AVOY: To the conclusion of Mr.Lashley's cross, which is page 6435, line 7.

To pick up where I left off, I know Mr. DePetris is going to say that doesn't deal with 2503 Albemarle Road, it deals with 316 51st Street and 236 55th Street. That is quite accurate. I think the compass of the Government's steps to impose on the reading of this testimony of only that portion of the cross-examination that exactly mirror's the Government's direct examination is --

THE COURT: I have asked for testimony that had to do with a particular part of Mrs. Kapraki's testimony that had to do with a particular part of Mrs. Kapraki's testimony regarding Counts 33 and 35. I can't see where this has anything to do with Count 35.

MR. MC AVOY: 316 51st Street and 236 55th Street, Mrs. Kapraki originally and accurately suggested were properties over which she had bribed Mr. Jankowitz and then subsequently recanted her testimony. I think perhaps the jury should be aware of the fact that her credibility was severely in issue with respect to this transaction. And to cut it off before these issues come up would be

to make a mockery of the re-reading of the examination. I submit that the reading of the testimony would be a wasting of the jury's time. I submit that the cross-examintion to the extent it relates to the credibility of the witness and the motive to falsify her testimony is relevant. That is the reason I support Mr. Brodsky, and in addition I ask the Court to read the remainder of Mr. Lashley's cross-examination.

MR. DE PETRIS: It relates to other properties. The jury wants cross-examination as to credibility -- then we are not reading all the direct examination. We are reading just as it relates to the bribery as to those two properties.

If the jury wants further cross-examination as to credibility, they can ask for it. If we are going to get started in reading as to credibility, we have to start reading the entire examination, and that means the entire examination of the Government.

THE COURT: I am going to do as I did with Mr. Brodsky. We are going off into another field, and I am going to stop it.

MR. BRODSKY: Your Honor ruled he is not going to read page 5617 through 5621 --

THE COURT: What is that? Are we back on that? 5616, line 5 through 7 --

MR. BRODSKY: I know that. 5617, through 5621, line 16.

THE COURT: Is that the one I said I would not read?

MR. BRODSKY: Yes. I just wanted to pinpoint it.

THE COURT: You did object to that.

(Continued on the next page.)

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THE COURT: Mr. Soviero?

MR. SOVIERO: I join in the request made by Mr. Brodsky and certainly the eloquent request made by Mr. McEvoy. I respectfully add to that that your Honor read that portion of the record that appears between Page 5797 and 5807.

THE COURT: Just a second.

MR. SOVIERO: 5797, this date is December 3, 1973. This is where, if it please the Court, if I may summarize it for you, I would be happy to hand up my copy --

THE COURT: I have one.

MR. SOVIERO: This is where I was questioning her, Line 17 -- 16.

THE COURT: Those are the bills --

MR. SOVIERO: Yes. Just before that, Line 14 refers to 2503 Albermarle Road. That's where we zero in and question her on the repairs that were made on the building and the use of the A. Fromin bills to exaggerate -- and it continues into Page 5607, if it please the Court.

I respectfully ask your Honor to read that to the jury.

THE COURT: These have to do with repairs to 2502?

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MR. SOVIERO: I submit, if it please the Court, I will admit as far as it appears on her credibility rather than pay direct bribe, since it directly zeroes in on the count and property I think it should be read to the jury.

THE COURT: Starting with Page -- I don't see anything wrong with that.

MR. DE PETRIS: I don't see how it relates to the bribery count.

THE COURT: It is with reference to the specific property involved. I am sure the jury is going to come at some point or other, tell us they have had it.

MR. SOVIERO: I have lost my copy to Mr. De Petris who is soiling it with his grimy fingers, if it please the Court.

MR. DE PETRIS: I don't listen to any of these insults anymore, I take them with a grain of salt.

I have no objection to the Court asking the jury --

THE COURT: I think it goes to -- what line on 5707?

MR. SOVIERO: 5708. I believe it goes to Line --

THE COURT: Wait a minute. That looks like colloquy between you and me. Excuse the colloquy.

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MR. SOVIERO: We don't go that far it it please the Court. I think we will go probably to Line 17 on 5805. Line 18, if it please the Court.

MR. ACCETTA: May I make a request of the Court?

THE COURT: Wait a minute. 5797 --

MR. SOVIERO: 58 --

THE COURT: Starting on?

MR. SOVIERO: 5797, it is colloquy, and we have to read some colloquy --

MR. ACCETTA: No.

MR. SOVIERO: Mr. Accetta said Mr. Brodsky has reference -- I think it should be read to Government's Exhibit 51 in evidence which is through 72 then interrupts and says 2503 Albermarle Road.

THE COURT: Start with Line 10 or 11.

MR. SOVIERO: Thank you, Line 11. Thank you, sir.

MR. ACCETTA: May I make a request to the Court? Would you mind reading it to yourself since there is so much colloquy in there that your Honor is best able to make a judgment --

MR. MC EVOY: I think that the reporter should read it. The reporters have been doing it competently and there is no reason not to carry on. I think it is

an undue burden on the Court.

MR. ACCETTA: If your Honor has no objection --

THE COURT: Frankly, I don't know how proper it is. I don't even read back my own charge unless I get consent. I didn't get consent the other day when I wanted to do it. Am I correct?

MR. ROSENKRANZ: That is correct. Your Honor, I would join in the objection and exception made by Mr. McEvoy and Mr. Brodsky.

THE COURT: All right. Bring the jury in.

(The jury is in the jury box.)

THE COURT: We are just getting around to your last two notes. Taking them in order, in the order in which they were sent in, your first note, which is marked Court Exhibit No. 33: "The jury requests reading of the portion of the charge regarding aiding and abetting in the commission of a crime particularly regarding Counts 33 and 35."

I am going to ask the reporter to read that portion of my charge and tell the reporter that he is to start at Page 21481, at Line 20 where I have put a line in red, and to read to and including Page 21484 at Line 13, where again I have placed a line in red.

(The reporter complied.)

THE COURT: Your second of the two requests you sent in was marked by the Court as Court Exhibit 34 and that reads: "The jury requests reading of Ortrud Kapraki's testimony regarding Counts 33 and 35."

Now, insofar as that is concerned, we are going to have to go to three or four sets of papers and I will keep in mind my promise to recess at 4:00 o'clock for the very obvious reason that I explained this morning.

We will start and go as far as we can and if we don't finish we will continue it tomorrow morning. I think the first one we will take will be the direct testimony of Mrs. Kapraki which is from the minutes taken on November 27, 1973. Mr. Reporter, this begins on Page 5176 where I have a red line on Line 15 and it goes to 5203, Line 22. And then on Page 5221, Line 4 where I have a red line, and goes to 5222 Line 7 where again I have a red line. You will notice on those particular parts, Mr. Reporter, I have paper clips so you can get to them.

We will start with that part and this testimony that will be read has to do with Count 35. I am wondering if I shouldn't read the one before since it precedes it in Page number, which would be Count 33. Just to put it in the proper order, maybe I should do

that. I think in fact your request says 33 and 35. Let me get to 33 first.

The direct examination with regard to that begins at Page 5114 of the minutes of November 26, 1973 starting at Line 11 where I have a red line. And it goes to 5621 Line 13 where again I have a red line. That testimony is the direct testimony with regard to Count 33.

Now, Mr. Reporter, read.

(Whereupon the reporter complied.)

THE COURT: We will then read the direct examination as to Count 35 and that involves some 32 or 33 pages. Let's go as far as we can or would you rather it go over until tomorrow morning?

THE FOREMAN: Tomorrow morning.

THE COURT: All right, Mr. Losher. It involves some 30 odd pages and we certainly won't be able to read those 30 odd pages in ten minutes. This will give you a chance to close up everything inside.

Tomorrow morning, as soon as you come in, I will ask the attorneys to be in promptly, and they have been very prompt, and we will start from where we left off here. And we will complete the reading of the testimony that you have asked for.

Now, since we are again parting, again I remind

you please don't let anybody approach you in any way or to bring to your attention in any way any newspaper article, or any report or discussion or any television or radio program of any kind, any of the media, I don't care what it is, just don't, don't read anything or listen to anything or don't let anyone bring anything to your attention that may in any way reflect upon what we are doing here, or may in any way make reference to the case we are dealing with. Specifically your job now is deciding this case in accordance with the testimony as you have heard it and you are the judges of the facts, and I told you so many times the facts are to be derived from the evidence in the case and you must be bound by the law as I gave it to you and I ask you to apply the law to the facts as you find them. So that any outside influence of any kind is certainly not going to be in any way or have anything to do with what you know about the case and how you have to decide this case.

Again, too, I want to say something, I ask you not to talk to anyone and not to let anyone approach you. That includes any conversation of any kind concerning any part of the case that you may have already rendered a verdict on. The mere fact you rendered a verdict thus far does not put you at

8 liberty, while you are at liberty, to talk about that part of the case. You talk about nothing having to do with this case with anybody. Don't let anybody approach you concerning it until you have completed your entire job and have rendered a verdict one way or the other as far as all the defendants are concerned.

Please take care of yourselves and don't discuss this case either amongst yourselves until you are back here tomorrow, all 12 of you. You are excused. Miss Sharker, I will talk to you again tomorrow. I trust you will be here again tomorrow morning. I will speak to you again tomorrow morning.

Goodnight.

(Jury left the courtroom.)

MR. ACCETTA: Before you read the direct on 2505, you might want to read Mr. Lashley's cross on the 51st Street property. Unless you want to do it direct direct instead of direct cross. You read the direct testimony with respect to that.

THE COURT: You mean because Lashley's was on 33?

MR. ACCETTA: Yes.

THE COURT: That is a good suggestion. I have no preference. We will be going to Count 35 then.

The rest we will be reading has to do with Albermarle Road, so we will put all the 35 stuff together.

I want to hold everybody up for a minute so the exhibits get back.

MR. BRODSKY: What will the schedule be with respect to Juror No. 10?

THE COURT: Juror No. 9?

MR. BRODSKY: Yes.

THE COURT: I don't know. The reason I said I will talk to her tomorrow is she doesn't know what the funeral arrangements are yet.

Tomorrow morning at 10:00 o'clock.

(A recess was taken at this time until June 20th, 1974 at 10:00 a.m.)

****

C 830

21746

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★
JUL 5 1974
TIME A.M.
P.M.

UNITED STATES OF AMERICA,

-against-

HARRY BERNSTEIN, ROSE BERNSTEIN, EASTERN SERVICE CORPORATION, HERBERT CRONIN, FLORENCE BEHAR, DUN & BRADSTREET, ARTHUR PRESCOTT, MELVIN CARDONA,

Defendants.

72-CR-587

United States Courthouse
Brooklyn, New York

June 20, 1974

B e f o r e:

HONORABLE ANTHONY J. TRAVIA, U.S.D.J.

and a Jury

GENE RUDOLPH
OFFICIAL COURT REPORTER

138

Appearances:

DAVID G. TRAGER, ESQ.,
United States Attorney
for the Eastern District of New York

BY: ANTHONY ACCETTA, ESQ.,
RONALD DePETRIS, ESQ.,
-and-
GEORGE BASHIAN, ESQ.,
Assistant United States Attorneys

ABRAHAM BRODSKY, ESQ.,
Attorney for Harry Bernstein

JOSEPH P. SOVIERO, JR., ESQ.,
Attorney for Rose Bernstein
-and-
LOUIS BERNSTEIN, ESQ.,

ANDREW T. McEVOY, ESQ.,
Attorney for Eastern Service Corporation

BODELL, GROSS & McGOVERN, ESQS.,
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BY: LOUIS MARTINE, ESQ.,
Of Counsel

RICHARD I. ROSENKRANZ, ESQ.,
Attorney for Florence Behar

(continued next page.)

C 832

Appearances: (Cont.)

WHITE & CASE, ESQS.,
Attorneys for Dun & Bradstreet

BY: OTTO G. OBERMAIER, ESQ.,
-and-
JOHN McAVOY, ESQ.,
Of Counsel

PATRICK WALL, ESQ.,
Attorney for Arthur Prescott

IRVING J. KLEIN, ESQ.,
Attorney for Melvin Cardona

BY: MICHAEL R. KLEIN, ESQ.,
Of Counsel

THE COURT: Good morning.

Mr. Obermaier, you have something before I call the jury in?

MR. OBERMAIER: Yes, I do, your Honor.

THE COURT: Up front and center.

MR. OBERMAIER: I ask the Clerk to mark these exhibits, K Z --

THE COURT: Just a minute. He's not here.

(Pause.)

THE COURT: Mr. Guisti, Mr. Obermaier wants these exhibits marked.

MR. OBERMAIER: Exhibit K Z, your Honor, is a portion of yesterday afternoon's Newsday, a Long Island daily and specifically, it is page 17.

THE COURT: I think it is a Nassau County paper.

MR. OBERMAIER: Nassau and Suffolk.

THE CLERK: What page?

THE COURT: Page 17.

MR. OBERMAIER: June 17 -- page 17 rather.

THE CLERK: Newsday article dated June 19, page 17, marked defendant Dun and Bradstreet's Exhibit K Z for identification.

(So marked.)

(Exhibit handed to Court.)

MR. OBERMAIER: I ask that this portion of the

Long Island Press be marked as Exhibit L A.

THE COURT: Is that the Press?

MR. OBERMAIER: Press.

THE CLERK: Long Island Press article dated June 19, marked defendant Dun and Bradstreet's Exhibit LA for identification.

(So marked.)

(Exhibit handed to Court.)

MR. OBERMAIER: Exhibit LB is an exhibit of yesterday afternoon's New York Post.

THE CLERK: New York Post article dated June 19, 1974, marked defendant Dun and Bradstreet's LB for identification.

(So marked.)

(Exhibit handed to Court.)

MR. OBERMAIER: LC is a portion of the New York Daily News --

THE COURT: Oh, you have another one?

MR. OBERMAIER: Yes.

This is a portion of the Queens and Nassau County edition of the Daily News of yesterday morning, specifically page -- it appears to be page 1.

Apparently, the paper comes in sections and it's not consecutively paginated.

By saying page 1 I don't mean to indicate it

is a front page newspaper article.

THE CLERK: New York Daily News article dated Wednesday, June 10, marked defendant Dun & Bradstreet's Exhibit LC for identification.

(So marked.)

(Exhibit handed to Court.)

MR. OBERMAIER: I make the same application I made yesterday morning, your Honor; application and motion -- both.

THE COURT: The motion, of course, would be for a mistrial and that's denied. The other, I'll ask the jury.

MR. OBERMAIER: I ask that they be examined individually.

THE COURT: Yes, I know that but I'll follow the same procedure I have followed.

MR. BRODSKY: In connection with the reading of the testimony, 2503, I would like to renew my application which I made yesterday for the reading of the additional testimony which I pointed out to your Honor.

THE COURT: Which one is it?

MR. BRODSKY: 5616, I think you're going to read.

THE COURT: That was the part I said I would

have read.

MR. BRODSKY: Beginning with line 5 right through line 7 but I was interested in --

THE COURT: Just a minute, now.

MR. BRODSKY: 5616.

THE COURT: I'm going to read --

MR. BRODSKY: November 20 --

THE COURT: I'm going to read 5616, 5 through 7, yes.

MR. BRODSKY: I ask your Honor also, again, to read pages 5617 and the first word of 5618.

THE COURT: Yes.

This wasn't included in your application yesterday.

MR. BRODSKY: Yes, it was.

THE COURT: It was included in your application yesterday?

MR. BRODSKY: It was but I want to pinpoint it because I asked you to read 5617 through 5621.

THE COURT: That's not part of your application of yesterday.

MR. BRODSKY: Yes, it was, Judge.

THE COURT: Well, go ahead. I don't recall it.

MR. BRODSKY: They protested it had to do with other property, if you recall.

THE COURT: Which was 51st Street because the properties in 33 and 35 -- was it 50 --

MR. BRODSKY: Thirty-five had to do with 2503, Albemarle Road and the other one was as to her testimony as to whether or not she had met him for the first time at 2305 -- rather, 2503.

THE COURT: The property in the other count --

MR. DE PETRIS: 211 53rd Street.

MR. BRODSKY: That was a different count.

THE COURT: Those are the counts the jury is interested in now.

MR. BRODSKY: Right.

THE COURT: All right. Simple questions call for simple answers. That's all.

MR. BRODSKY: I ask you, with reference to count 35, that you read 5617 and 5618 -- one word on 5618, on line 2, the word "yes." Omit the balance of 5618 because it's colloquy and then go to 5619, line 17, up to line 17.

THE COURT: Up to -- all of 5619?

MR. BRODSKY: And then 5620.

THE COURT: What part of -- 5618 through 5619, you say?

MR. BRODSKY: Through the word "yes," and then we skip from line 18 down to --

THE COURT: If you're going to say 5618 to the word "yes" does that mean you skip the balance of that page?

MR. BRODSKY: Omit the balance of that page because it has to do with Mr. Accetta, you and I. It's colloquy we don't want and then 5619.

THE COURT: Starting with line, what?

MR. BRODSKY: Beginning with line 18.

THE COURT: Yes.

MR. BRODSKY: And then starting with line 7 on page 5620 and beginning through 5621, line 16, through line 16 with the answer "yes."

That's it.

THE COURT: Mr. DePetris?

MR. DE PETRIS: Now, Mr. Brodsky is the diehard. This is the same application he made yesterday.

MR. BRODSKY: I'm not a member of Sear's, by any chance, so let's not talk about diehard.

I said I was renewing the application.

MR. DE PETRIS: This has nothing to do with the jury's request. Mr. Brodsky is trying to get in credibility.

MR. BRODSKY: I submit it is very vital with reference to the property about which they are making inquiry.

THE COURT: I'll make the same ruling as yesterday.

MR. BRODSKY: I'll take the same exception as yesterday.

MR. SOVIERO: Your Honor, I asked you to read from pages 5797 to 5805.

THE COURT: Line 18.

MR. SOVIERO: Upon sober reflection and after a careful examination of the material contained therein, I don't think it is really relevant, if it please the Court, to the point the jury is making question on.

THE COURT: None of that?

MR. SOVIERO: No. It has to do with the bills from Froman and Company.

THE COURT: Then we won't read that part, the Soviero cross examination which the Court indicated yesterday it would permit a reading of to the jury contained in pages 5797 starting with line 11 through 5805, line 18, the request by Mr. Soviero was withdrawn and it shall not be read to the jury.

All right. Now, Mr. Giusti, please call the jury in.

We have another note. As you note, at this very moment, I received a note from the jury which the

Court will mark Court Exhibit --

THE CLERK: Thirty-five.

THE COURT: The note reads as follows:

"The jury no longer finds it necessary to hear the Kapraki testimony regarding count 35 at this time," and I think that is all we were to read today -- no, the Lashley cross which had to do with count 33. So, the rest of the testimony we were going to read had to do with count 35 so I ought to inquire if they want the testimony regarding count 33.

MR. WALL: Two things: 1, with specific reference to this --

THE COURT: I have to bring them in as a result of Mr. Obermaier's motion.

MR. WALL: May we find out now about Miss Sciacca's engagement for Friday?

THE COURT: I will ask her.

THE CLERK: Note from jury marked Court Exhibit No. 35.

(So marked.)

(Jury entered jury box at 10:30 A.M.)

THE COURT: Good morning.

Good morning, first of all, ladies and gentlemen.

THE JURY: Good morning.

THE COURT: Before I ask you to continue your

deliberations I would again like to ask the question I always ask before you begin your deliberations, keeping in mind your oath.

Has anyone of you seen any article or has any article from any newspaper been brought to your attention? If it has, I would like to know. So, if you read or had anything brought to your attention, please raise your hands.

(No response.)

THE COURT: I assume from no hand being up that you have not.

No. 2, Miss Sciacca, how about tomorrow?

JUROR NO. 9: The funeral is Saturday.

THE COURT: Can I, therefore, expect you tomorrow?

JUROR NO. 9: Yes, but ai have to leave at 4:00 o'clock.

THE COURT: Absolutely. I think I ought to do that today and tomorrow -- 4:00 o'clock.

So, we will proceed today and tomorrow with deliberations.

I also received from you this morning -- by the way, we had not continued to satisfy your requests yesterday regarding certain testimony only, and I have received your note this morning which the Court

marked Court Exhibit 35. It is a coincidence, the Exhibit is No. 35, the count is 35, but the note indicates that you no longer find it necessary to hear the Kapraki testimony regarding count 35 at this time.

Yesterday I read you, or had read to you, the direct testimony of Mrs. Kapraki with reference to count 33. We had not completed the testimony with regard to that count and so far as cross examination is concerned so I take it we will continue that first.

JUROR NO. 1: It won't be necessary.

THE COURT: In other words, your note, which you sent me this morning, it wouldn't be necessary regarding count 35, you also mean the balance of the testimony to have been read concerning count 33.

JUROR NO. 1: Yes.

THE COURT: Okay. We are ready to proceed with your deliberations. You may retire and continue.

(Jury excused for further deliberations.)

MR. SOVIERO: Is lunch going to be at 12:00 again?

THE COURT: I told Mr. Guisti to have them order it at 12:00.

MR. DE PETRIS: I think Mr. Guisti said to the marshal , 1:00 o'clock.

THE COURT: We'll work on the basis of 1:00 o'clock.

MR. BRODSKY: 12:00 is too early.

THE COURT: Yes. Even 1:00 is but we'll work on the basis of 1:00 o'clock.

While I have you here I just heard from the marshal that they're going to ask the usual questions; can they take a short walk before or after lunch so I'll tell them they may.

MR. SOVIERO: In view of the fact that they go home every night, they don't see why they have to be shepherded during this walk.

THE COURT: I will insist on it, knowing what occurs around this building in the broad daylight. I take no chances, particularly with the jury. It has happened to several of the girls employed in this building. They have been attacked in the middle of the day, in broad daylight.

Mr. Accetta, was it your secretary?

MR. ACCETTA: No, but one of the girls.

(Recess taken.)

(Time noted 3:50 p.m.)

THE COURT: Is everybody here? Yes.

I have a request from the jury which we will mark Court Exhibit 36 which reads as follows:

"The jury requests files on counsel 35, 37, and 38" and "2. A reading of testimony involving Harry Bernstein in Count 25, -- property address 416 52 Street."

In view of the fact we weren't supposed to recess at four o'clock -- Well, does that testimony reading involve a lot?

MR. ACCETTA: I just don't know, Your Honor.

THE COURT: I don't know how you could tell.

Maybe that ought to be held up until the morning.

MR. DE PETRIS: What involves reading all of Fey's testimony as to how the conversations took place -- Count 25.

THE COURT: Property address 416 52 Street.

THE CLERK: That's exhibit number 17.

THE COURT: That's 17?

THE CLERK: Yes.

MR. DE PETRIS: That's going to involved at what point in time the evidence shows he was aware of what was happening and that was Fey's testimony, I believe. It is the full statement count.

THE COURT: Yes, it is the full statement count.

It is a full statement count -- count 25.

MR. SOVIERO: If it is with respect to a full statement count I submit there is no testimony on any count concerning Harry Bernstein.

THE COURT: I hope you don't mean there's no testimony on count 25.

MR. SOVIERO: There's a full statement count.

THE COURT: I asked a simple question -- count 25.

MR. SOVIERO: That's my statement.

THE COURT: I'm sure there was testimony with regard to 416 because my notes indicate there was.

MR. BRODSKY: We will have to look it up and that will take time.

Will Your Honor ask the jury if they want it fresh tomorrow morning?

THE COURT: I intend to do that and as far as I am concerned the name they put in here means nothing to me. They want testimony concerning count 25 for 416 52nd Street, and that's what they'll get.

MR. DEPERRIS: Can we have it again?

THE COURT: The jury is requesting a reading of the testimony concerning Harry Bernstein in count 25 -- property address 416 52 Street.

MR. DE PERRIS: The state of the record is as

follows: Kanraki testified to the falsity of the statement. She had no dealings with Harry Bernstein with regard to that.

The testimony as to Harry Bernstein's knowledge comes from the general testimony of Fey and whether or not it occurred before or after that property. That's what the evidence is against Harry Bernstein as connected with that property.

The testimony of Fey, on direct examination, sought to establish it occurred at a certain time and the cross examination tried to put it at a later time.

MR. BRODSKY: You see how he blows hot and cold? Yesterday he took another position with regard to Kanraki's testimony and now he takes a different position.

MR. DE PETRIS: You might want to ask him what they want.

THE COURT: I will.

MR. ACCETTA: You might advise them as to Fey's testimony --

MR. BRODSKY: No, no, no.

You see, they're always looking for the edge.

THE COURT: So are you and you wouldn't have my respect if you didn't.

Bring in the jury.

(The jury entered the jury box at 3:55 p.m.)

THE COURT: That envelope should be given to Mr. Jiusti and he will seal it.

MARSHALL: Yes.

THE COURT: Mr. Jiusti, before you seal it you may take the loose exhibits and the checks and put them inside that envelope.

Do you want to put them inside the envelope?

JUROR NO. 1: Yes.

THE COURT: This way they won't be separated.

I received your note which the Court has marked Court's exhibit 36.

In view of what I indicated earlier this morning and to accommodate Miss Scinaca, we're going to quit at four o'clock so I don't know if I can accommodate you with those requests and do what you want by four o'clock so we'll go over until tomorrow morning.

Now, before you leave, on your first request, concerning certain files, that will be ready for you and you can take them in early tomorrow morning.

Now, the reading of the testimony involving Harry Bernstein in count 25 -- property address 416 52 Street, I would ask you, if you could tell me a little more specifically what you are referring to --

whether you want testimony of any particular person concerned in that property or whether you have anything particular in mind.

JUROR NO. 1: Well, what we wanted to find out, is how Harry Bernstein was involved in that particular count.

THE COURT: Then I think we'll have to get the testimony.

All right.

JUROR No. 1: We didn't think the file would help us indicate anything on that.

THE COURT: You have the file. I think it is number 17 --

JUROR No. 1: We don't.

JUROR No. 2: No, we don't have that file.

THE COURT: You don't have that file with reference to that property?

JUROR No. 1: No, sir.

THE COURT: See if there's a file with reference to 416 52 Street.

THE CLERK: That's Exhibit No. 17.

JUROR No. 2: We have it.

THE COURT: I gave it to you among the fourth batch.

JUROR No. 1: Oh, yes, it's the testimony we

want -- just as it involves Harry Bernstein.

THE COURT: All right.

I'll have to straighten that out with the lawyers and I'll do that before we go today and give you an answer to both tomorrow morning.

In the interim we will recess until tomorrow morning and again, members of the jury, it's extremely important that you don't have anything to do with any newspaper, radio or television that might in any way bring this case to your attention.

Don't let anyone approach you in any way.

Don't individually discuss this case with anybody and save whatever ideas you have until you come back and sit down together and discuss it among yourselves tomorrow morning.

Again, talk to no one about this case and I will see you tomorrow morning at ten o'clock.

The Marshall will keep the sealed envelope and the other exhibits Mr. Musti will hold.

Good night.

(Jury excused for the day at 4:00 p.m.)

THE COURT: Now, it is apparent to me from their answers -- and I tried to be as evasive as I know -- that Mr. Mosher, number one juror, indicated that they wanted to know the testimony that has to do with

Count 25 and how Mr. Bernstein is in any way connected with Count 25.

You fellows made the allegation and you have him in as a party defendant in Count 25, so you come up with the testimony that you say corroborates your charge or allegations in Count 25.

MR. DE PETRIS: Fey's testimony.

THE COURT: I don't care what it is. Whatever you are using that you say incriminates Mr. Bernstein in that Count, have it ready and I'll let you know tomorrow.

MR. DE PETRIS: We'll have it ready tomorrow but I suggest defense counsel look through the cross examination --

MR. BRODSKY: We won't even look for cross because there was no mention in Fey's testimony as to this piece of property they are inquiring about.

The testimony was in general and never mentioned 416 52nd Street.

So, you do what you have to do.

THE COURT: All right, and if there's any particular testimony of any witness that even mentions 416 52nd Street I'd like to know.

MR. DE PETRIS: We have Kanraki's direct testimony and that established the falsity and Mr. Fey's

testimony --

THE COURT: Yes. Kanrakis testimony does concern Count 25. Her testimony does not mention names so I'll go that far.

MR. DE PETRIS: We'll have Kanrakis direct and Foy's direct ready for tomorrow.

MR. MC EVOY: May I inquire, as long as the topic is opened -- the jury used the words "involved in" which seems to invite a submission of testimony according to a theory of proof.

THE COURT: Yes. That's exactly what I said to start off my remarks.

MR. MC EVOY: Is it Your Honor's position that with respect to the testimony and the cross examination with respect to that theory of proof, from whatever source derived, it will be read to the jury?

THE COURT: If the allegations of the Government, regarding whatever testimony they asked to have read -- if it in any way affirms or otherwise bears out their allegations that he is involved because of that testimony then anything in that regard I will allow by way of cross examination. So, the answer to your question therefore is yes.

MR. MC EVOY: I'm thinking that a great deal of my closing argument was addressed to when, if at

all, could the question of knowledge ever arise.

THE COURT: I don't know if that's what they're looking for but I'll consider that.

MR. MC EVOY: I think it has to be considered, Your Honor, because the Government has conceded the fact that except for Mr. Cardona no one had direct knowledge. Everyone else would have to be in the theory of conscious avoidance or reckless disregard.

MR. BRODSKY: Judge, I think they have made their questions specific enough. They don't want anything general. They mention Harry Bernstein in connection with this piece of property.

THE COURT: How he is involved and any testimony that in any way, either circumstantially or directly relates to it, either way, I will take it and have it read.

MR. BRODSKY: Fey says, "They're all phonies." That's the testimony. Your Honor will take it?

THE COURT: I haven't seen the testimony that's going to be offered to be read.

MR. DE PETRIS: Well, that's the Government's theory.

MR. BRODSKY: I object strenuously to that and if you do that then at least go into all my cross examination of Mr. Fey with reference to the letter he

wrote and the dates and when he first found out, when he first told the FBI that he learned it from York and all that will go in.

MR. DE PETRIS: Yes, that's what I said.

THE COURT: If they're going to offer any part of the testimony, any cross, with regard to Fey, I will allow any part of it that is relevant.

MR. BRODSKY: That will re-open the whole case.

MR. MC EVOY: There are other aspects of the trial as well, relating to the question of the timing as to when it could be claimed to be obvious.

Mrs. Kanraki said certain things with regard to that.

MR. BRODSKY: We want Bernstein's discussion with Miller.

MR. DE PETRIS: That was six months later.

THE COURT: I'm not going to answer questions in a vacuum. If you think I am -- Y, X, X.

I want to see what you alleged to be the Government's proof with regard to Count 25. You fellows do what you want. You look at your testimony and we'll look at it tomorrow morning.

MR. BRODSKY: Including the stipulation with respect to Miss Drexler.

THE COURT: Oh, Mr. Brodsky, including the

whole nine months testimony and I'll tell you how much they're going to get.

MR. BRODSKY: That's what they want.

THE COURT: That's my problem and I will take care of my problems. I don't need any help.

Let's go home.

I will see you tomorrow morning at ten o'clock.

Court is adjourned.

(Court adjourned for the day at 4:00 p.m.)

* * * *

C 855

UNITED STATES DISTRICT COURT 21771

EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ JUL 5 1974 ★
TIME A.M.
P.M.

UNITED STATES OF AMERICA,

-against-

HARRY BERNSTEIN, ROSE BERNSTEIN, EASTERN SERVICE CORPORATION, HERBERT CRONIN, FLORENCE BEHAR, DUN & BRADSTREET, ARTHUR PRESCOTT, MELVIN CARDONA, JOSEPH JANKOWITZ,

Defendants.

72 CR 587

United States Courthouse
Brooklyn, New York

June 21, 1974
10:00 o'clock a.m.

B e f o r e :

HONORABLE ANTHONY J. TRAVIA, U.S.D.J.

And a Jury.

* * *

EMANUEL KARR
OFFICIAL COURT REPORTER

139

Appearances:

EDWARD J. BOYD V., ESQ.
United States Attorney for the
Eastern District of New York

BY: ANTHONY ACCETTA, ESQ.,
RONALD DE PETRIS, ESQ.,
- and -
GEORGE BASHIAN, ESQ.
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ABRAHAM BRODSKY, ESQ.
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JOSEPH P. SOVIERO, JR. ESQ.
Attorney for Rose Bernstein
- and -
LOUIS BERNSTEIN, ESQ.

ANDREW T. MC ENVOY, ESQ.,
Attorney for Eastern Service Corporation

BODELL, GROSS & MC GOVERN, ESQS.,
Attorneys for Herbert Cronin

BY: LOUIS MARTINE, ESQ.
Of Counsel

RICHARD I. ROSENKRANZ, ESQ.
Attorney for Florence Behar

(Continued on next page.)

Appearances (Cont'd):

WHITE & CASE, ESQS.
Attorneys for Dun & Bradstreet

BY: OTTO G. OBERMAIER, ESQ.
- and -
JOHN MC AVOY, ESQ.
Of Counsel

PATRICK WALL, ESQ.
Attorney for Arthur Prescott

IRVING J. KLEIN, ESQ.
Attorney for Melvin Cardona

BY: MICHEAL R. KLEIN, ESQ.
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BOOTH, LIPTON & LIPTON, ESQS.,
Attorneys for Joseph Jankowitz

BY: ALLEN LASHLEY, ESQ.,
Of Counsel.

* * *

C 858

THE COURT: The case on trial I will delay for a few moments until all counsel are in. In the interim I will try to take up some of the matters on my regular calendar.

(A short recess was taken until 10:15 o'clock a.m.)

MR. MC EVOY: Your Honor, Mr. Soviero has indicated to me yesterday afternoon he would be a little late. He asked me to cover. I have spoken to Mrs. Bernstein and it is agreeable to her and agreeable to me as well.

THE COURT: Is that all right, Mrs. Bernstein?

MRS. BERNSTEIN: Yes.

THE COURT: Mr. Wall is here and I understand everybody else is here. I will wait until everybody else comes in and I will suspend the balance of my calendar until I take care of the matter on trial and we have gotten to the point where we were yesterday afternoon.

Mr. DePetris, I might ask you while we are waiting for Mr. Rosenkranz and Mr. Accetta, one of the requests in Court Exhibit 36, the last request that the jury sent in, was for files on Counts 35, 37 and 38.

MR. DE PETRIS: Yes, we have those. There is

no file on count 37. If you will recall, that is the one where we were not able to locate the FHA file. All we had was Mrs. Kapraki's copy of the conditionals.

THE COURT: Was that offered in evidence?

MR. DE PETRIS: That was objected to and your Honor excluded it, so there is nothing in evidence. It was used to refresh the witness's recollection but not in evidence.

THE COURT: May I say that I am not going to delay in getting to the jury the information that they request as speedily as I know how. Yesterday when we talked about the request preliminarily it became quite apparent to me by discussion with counsel that each counsel was indicating what they thought the jury wanted and what they thought should be read insofar as the testimony is concerned. In that regard I am sure every body knows that the Court has a certain amount of discretion and a certain amount of latitude in seeing to it that these requests of the jury are answered as speedily as possible and I have decided that I shall inquire further from the jury to specifically get from them that which they want. I have given them what they want, only what they want, no more, no less, and I will get it to them as soon as possible.

I am going to ask the jury to be brought in unless --

MR. OBERMAIER: I have an application.

MR. DE PETRIS: These are the files, Exhibits 51 and 59, counts 35 and 38 respectively.

THE COURT: Mr. Obermaier.

MR. OBERMAIER: Good morning, your Honor.

THE COURT: Good morning, sir.

MR. OBERMAIER: I would ask the Court to have marked Exhibit LD a portion of yesterday's "Long Island Press" which contains an article captioned "HA trial jury gets night off." I think the headline writer of the newspaper forgot the P and it should be probably HHA trial gets the night off.

THE COURT: They might have meant the Housing Authority, they might have mixed it up.

MR. OBERMAIER: It mentions your Honor's name so I guess it is in this case.

THE COURT: They mention "Justice", I do not know, there is no Justice here.

MR. OBERMAIER: Some of us would tend to agree with that.

THE COURT: We are referred to as judges so that I only mean that in that regard but I think justice is being dispensed in this case and has been

ever since it started and will continue until the end.

MR. OBERMAIER: On the basis of this article LD, I renew the application I made yesterday and the day before yesterday.

THE COURT: Very good. The motion for a mistrial is denied. The application that you make with regard to individual interrogation I will deny but do it my way as I have done up to now.

THE CLERK: "Long Island Press" article dated June 20, 1974 marked Dun & Bradstreet Exhibit LD for identification.

THE COURT: Bring in the jury.

(The jury took its place in the jury box.)

THE COURT: Good morning ladies and gentlemen of the jury. Getting back to where we left off yesterday in regard to your request which was marked Court Exhibit 36, before I get into that, I would like to ask first whether anyone of you has seen any article in any newspaper? Whether any article in any newspaper has been brought to your attention and whether or not any one of you has heard any broadcast of any kind through any media, radio, television or otherwise, or whether any such has been brought to your attention? If you have, please raise your hand.

(No hands were raised.)

THE COURT: Not indicating that anyone has raised his hand I will proceed to the next order of business.

First of all, I think I was able to accomplish your request concerning cleaning out the jury room. In fact, when I left last night it smelled nice and clean, it smelled like a nice hospital room and next time do not let it wait so long. If you are not satisfied with the way it is just let me know and I will see to it that the hot poker is used in the right place in order to get some action.

Next, I want to refer to your request marked Court Exhibit 36. The jury requests files on counts 35, 37 and 38. Now, if you will recall during the course of the trial it was indicated that the file which referred to count 37 could not be found and that there were only certain papers which were copies of certain papers within that file, which the Court refused to accept and sustained the objection to the filing into evidence or offering into evidence that particular paper. So there is no file with respect to 37. As to 37, therefore, you must rely on the testimony if there was any adduced with respect to that count.

The other two files, with respect to counts 35

and 38, are available. One is Exhibit, Government Exhibit 51 in evidence and the other is Government Exhibit 59 in evidence, which will be made available to you.

With respect to your second item in that request, namely the reading of testimony involving Harry Bernstein in count 25 -- property address 416 52nd Street, I would like to ask certain questions after I preliminarily tell you something concerning that and then I will ask you to possibly write me another note and you can specifically zero in on what you want.

(Continued next page)

THE COURT: (Continuing) First of all, count 25 is a false statement count and I indicated to you in any charge that you should consider all the testimony and it is for you to determine, based on all the evidence, direct and circumstantial, whether the intent or knowledge necessary that the Government must prove beyond a reasonable doubt could be determined and must be determined by you.

Insofar as this case is concerned, we have here, of course, the testimony concerning these false statement counts that the Government alleges were false and in that regard you have, of course, the files, the FHA files which are in evidence and you have the 2900 applications which were submitted to the FHA and which are included in those files which are in evidence. And you also have, and I gave you for your own personal use, the copies that I used in order to circle the particular allegation of false testimony which you could use and I just gave you them at that time to make it easier for you but told you, if you recall, that you are to consider all the testimony and all that file. I just circled them so we could zero in on what it is, particularly that the Government alleged were false statements.

And then with regard to this testimony you will

find that Mrs. Kapraki testified as to the false statements concerning this particular piece of property mentioned in count 25, which was 416-52nd St. In that testimony by Mrs. Kapraki, no mention was made by her regarding the defendant Harry Bernstein. She did not mention his name insofar as that property was concerned.

Then after we had the testimony of Mrs. Oquendo and in her testimony she did not --

MR. BASHIAN: Your Honor, I believe that is Mrs. Eugenia Rivera.

THE COURT: I am sorry, Eugenia Rivera, I am sorry. I am glad you mentioned that. I just had Eugenia and I thought it was Oquendo but it is Mrs. Eugenia Rivera and in her testimony there was no mention of the defendant Harry Bernstein.

And next we had the testimony of Mr. Frank Fey and you recall that his testimony, and this is for you to determine, not for me to say, but I do not recall Mr. Fey at any time using the number and street number of a house at 416 52nd Street. He did not mention that property specifically.

His testimony if you recall had to do with the timing and conversations that he has alleged to have had with other people in Eastern Service and you will

recall in that regard my charge with regard to the fact that I received that testimony insofar as indicating in the testimony the state of mind of Mr. Fey and the state of mind of those with whom he had conversations and that testimony had to do with the timing and intent and knowledge and you recall during my charge too, that I said that the Government's proof in this case is direct and circumstantial and you remember I told you too that all that evidence must be taken together and certain standards must be applied in your determining the facts from that proof.

Now then Friday, I believe it was Friday, when I started my charge and when I continued that charge with respect to the false statement counts concerning the defendant Harry Bernstein, Eastern Service, Melvin Cardona and Florence Behar, and you will recall in my charge with respect to these false statement counts, I read one of the counts and I told you that all of the false statement counts were identical except for certain date and place and particular defendants concerned, and after reading one of the counts to you I gave you the essential elements, each of which the Government must prove beyond a reasonable doubt. Then in my charge concerning the essential elements I told you that one of the essential elements first

was the making of a flase statement and then I secondly talked about knowledge, that they must know that the false statement was false and I described that knowledge is something that you must decide from all of the evidence in the case and I told you that knowledge could be established by direct or actual knowledge or it could be established, part of it anyway, that it could be established by conscious avoidance or reckless disregard, and then I went on to describe the other essential elements.

Then, after completing my charge with regard to the false statements as to those four particular defendants, I think at that time we adjourned to Monday morning and Monday morning I went into the Section 2 charge with respect to those false statements. If I recall correctly, and of course it can be read, in discussing the charges under Section 2 I specifically referred to the one count, count 25, concerning the defendant Harry Bernstein and I charged you at that time that in that particular count the allegation of the Government was that he aided and abetted insofar as that count was concerned, and then if you recall I said certain things with regard to what has to be found by you before you can consider whether or not there was aiding and abetting. That portion of

the charge if you want I will be glad to read or any part of the charge with regard to false statement counts or the specific Section 2 count in the false statement charges concerning Mr. Harry Bernstein.

So you can see that your request brought to my attention a lot of things that I think you ought to be aware of so you will be able to tell me exactly what you want and I will be able to give you exactly what you want, no more, no less, and as fast as I know how so that if you wish you can give me another request. These files, of course, we will take care of.

You ask for the testimony of Mrs. Kapraki if you want and whatever cross-examination there was of her concerning this property. You can ask for the testimony of Mrs. Rivera and the cross-examination with regard to that particular property. Or you can ask for the testimony of Mr. Fey with regard to his testimony concerning the particular element of knowledge and intent or whatever other part you may want and you can ask for any part of my charge. So I am going to ask you to go back and continue your deliberations and send me a new note zeroing in on any particular thing that you want to know concerning that part of the request and I will accomplish it if I can.

(The jury left the courtroom.)

THE COURT: Yes, Mr. Brodsky. I am waiting, Mr. Brodsky.

MR. BRODSKY: I respectfully except to your Honor's remarks to the jury in answer to their question requesting Harry Bernstein's connection with the property 416 52nd Street.

THE COURT: Your objection is noted and overruled.

MR. MC EVOY: May I also join in behalf of Eastern Service Corporation and Mrs. Bernstein.

THE COURT: Same ruling.

MR. ROSENKRANZ: I also join in that motion and I will add --

THE COURT: Yes, Mr. Rosenkranz?

MR. ROSENKRANZ: I would ask your Honor to send in to the jury the stipulation concerning the defendant Florence Behar and I believe Eastern Service concerning the false statement count which the Government agreed that the witness Kapraki had not told.

THE COURT: When they ask me for that particular stipulation I will send it in.

MR. ROSENKRANZ: Your Honor has mentioned everything else that related --

MR. BRODSKY: May I please say --

THE COURT: You may talk for yourself.

MR. ROSENKRANZ: The Court in its supplemental charge --

THE COURT: I have not sent in anything yet.

MR. ROSENKRANZ: Your Honor mentioned everything else to the false statement and asked the jury if they requested any of these things but did not mention the stipulation nor did your Honor mention the stipulation during the initial charge. I think it should be mentioned to the jury. They may have forgotten about it. I think it is certainly as important as the other things.

THE COURT: Which stipulation are you talking about? Was it mentioned in my charge?

(continued next page)

MR. ROSENKRANZ: No, it was not. It is the stipulation which the Government agreed that Ortrud Kapraki had not told Eastern Service or the defendant Florence Behar that any of her false statements were false or known to be false.

MR. ACCETTA: I think the stipulation was they had not been told that any of the false statements were in fact false. That was the stipulation, not whether they knew or not, that is a question for the jury to decide.

THE COURT: I am not limiting the jury to anything in particular. I told them they have to consider all of the evidence and they can ask for anything that they want in addition to what we are talking about.

I assume from their request they are interested in whether or not there was any connection, to use their exact words, "testimony involving Harry Bernstein" in count 25. So I will find out what they want when they come back with a second request. And then I will make a decision with respect to your motion.

MR. ROSENKRANZ: Thank you, your Honor.

THE COURT: The jury will eat lunch at 1:00 and they can take their usual stroll during the lunch hour and the attorneys will take their lunch hour starting

at at 1:00 so we will be available when they are available. Let the marshal know that. Counsel in this case can stand at ease while I go back to my calendar.

(Whereupon a recess was taken until 11:00 a.m.)

THE COURT: I have a note which does not require any appearance by all the lawyers. It says, "Please call 2971000, Jamaica Post Office, and tell them that Mr. Howard Fleuri from Hollis Station is on jury duty on 6/21, today, and Rudy Royce from Maintenance is here also."

I am going to ask the Marshal to make those calls and let the Post Office know because usually on Friday they go to work.

MR. MC EVOY: No objection. I think it should be marked as a Court Exhibit.

THE COURT: I will do that too. I want the Marshal to make the call. Make the call and give me back the paper so it can be properly marked.

For the record the request which is on behalf of Mr. Fleuri and Mr. Royce will be marked Court Exhibit 37.

So marked.

(Another recess was taken until 11:10 a.m.)

THE COURT: I have another note from the jury.

MR. MC EVOY: For the record, Mr. Rosenkranz had to go over to Supreme Court for twenty minutes. He asked me to cover and it is agreeable to me and to Mrs. Behar.

THE COURT: Is that correct, Mrs. Behar, that Mr. McEvoy will pinch-hit for Mr. Rosenkranz?

MRS. BEHAR: Yes, your Honor.

THE COURT: If Mr. Wall is not in by then I will ask Mr. Obermaier to pinch-hit.

Mr. Wall and Mr. Obermaier are both here now.

Mr. Martine and Mr. Wall is here and Mr. McEvoy has already indicated he will pinch-hit for Mr. Rosenkranz and Mrs. Behar she will consent. Therefore I will at this time now read a request I just received which the Court will mark Court Exhibit 38.

(So marked.)

THE COURT: Which reads as follows: The jury requests one, Frank Fey's testimony regarding Harry Bernstein's state of mind.

Two, the Judge's charge on count 25, which will be the charge with respect to 25 I assume on both the aiding and abetting and the initial charge insofar as that is concerned.

If you will get the testimony and tell me what

pages of Frank Fey's testimony appears and then we will read that plus whatever cross-examination may be pertinent to that request. Mr. Bashian, did you hear me read the request?

MR. BASHIAN: I am sorry, I did not, I was a few minutes late, your Honor. I looked at Mr. DePetris' notes.

THE COURT: Show it to Mr. Bashian.

MR. BASHIAN: Thank you, Judge. Your Honor, I have gone through the direct and cross and redirect of Mr. Fey and I have excerpted out the following pages and lines of transcript from both direct and cross and redirect, which in my judgment bear on the jurors' request. There well may be other portions I have overlooked and counsel may well object to what I have suggested but at least this can be a starting point.

THE COURT: Bear in mind that Mr. Fey began his testimony on January 29 of this year and with the exception of a recess between the 31st and the 4th of February, his testimony continued until February 6th. That included both direct, redirect and cross and re-cross, and in one instance Mr. McEvoy's re-re-cross.

MR. BASHIAN: That is correct, your Honor.

If you recall, your Honor, Mr. Fey testified

basically to two separate conversations he had with Mr. Bernstein. Now the first conversation that he testified having with Mr. Bernstein appears at the following pages in his direct examination from January 29: pages 10775 line 19 to 10777 line 22. And Mr. McEvoy cross-examined Mr. Fey at some length as to the time frame in which this conversation took place. If you'll remember Mr. Fey said that it was after the time that York came and Mr. McEvoy questioned him about that and if you want to go to that that would be on February 4, 1974 from page 11274 line 25 to page 11281, the entire page. It is a short page, a seven-line page. I think the reporters were being changed at that point.

THE COURT: A changing of the guard.

MR. BASHIAN: That is Mr. McEvoy's cross-examination on that.

The second conversation that Mr. Fey testified to that he had with Mr. Bernstein appeared in direct examination on January 29 from page 10777 line 23 to 10782 line 21. He was cross-examined about that by Mr. McEvoy on February 4 and he was questioned about the two conversations. Mr. McEvoy was trying to fix it into other events that were taking place and Mr. Fey at that point in his cross-examination made

reference to an instruction that he had given to the Processing Department not to accept Blow statements and he said he made that, he gave that instruction after at least one of the two Bernstein conversations and he says,Mr. McEvoy, "Do you remember it to be faulty"and he says yes it could be possible, words to that effect. This is Mr. McEvoy's cross now, 11272 line 12 to 11273 line 21.

Then on redirect examination of February 5, I think it is redirect --

THE COURT: Your redirect started on February 5.

MR. BASHIAN: Right. There is further testimony concerning the time of these conversations or the time of the instructions to the Processing Department not to accept Blow and the first of those references at page 11508 line 23 to 11514 line 3. There is additional testimony concerning the timing of the conversations beginning at 11514 line 20.

THE COURT: You mean after line 3.

MR. BASHIAN: Yes sir.

THE COURT: The same page.

MR. BASHIAN: That may or may not be exhaustive of the portions of the testimony of Mr. Fey that relate to Mr. Bernstein's involvement or Mr. Bernstein's state

of mind. But I think a reading of them will show they do relate to the question. There may or may not be other references. I am sure if there are Mr. McEvoy will so state.

THE COURT: Was there any cross or recross on your redirect? Was there any cross or recross with regard to that direct testimony on your redirect examination?

MR. BASHIAN: No sir, not that I can find.

(Continued next page)

MR. BRODSKY: I think Mr. Bashian had his tongue in his cheek, when he said there may be other references.

MR. BASHIAN: I did not, your Honor, I really did not.

MR. BRODSKY: I thought I cross-examined Mr. Fay, but I find that I evidently did not, from Mr. Bashian's recounting of the testimony with reference to Mr. Fay. I will ask your Honor to read to the jury --

THE COURT: I know you cross-examined. You cross-examined him beginning January 31st.

MR. BRODSKY: January 30.

THE COURT: January 30th in the afternoon. And you concluded your cross examination --

MR. BRODSKY: The following day.

THE COURT: The following day at about 11 o'clock.

MR. BRODSKY: I have that schedule, too, Judge. I got it from your distinguished clerk, Mr. Giusti.

I would ask your Honor to read to the jury from January 30, page 10,945 line 15 to 10,946, line 1.

THE COURT: That is line 1.

MR. BRODSKY: Through 4, line 1 through 4, Judge.

THE COURT: And on page 10,945.

MR. BRODSKY: Lines 15 through 17.

From January 31, of the transcript, Judge, I ask your Honor to read to the jury the following: Pages 10,985, 86.

THE COURT: All of 985.

MR. BRODSKY: All of 5, 6, 7, 8, 9, 10, 990, 91, 92, 93, 94, 95, 96, 97, 98 through line 23.

On February 4, page 11, 297 and 11,298.

THE COURT: Is that your cross examination?

MR. BRODSKY: No, I think it was Mr. Mcelroy.

THE COURT: It was either Mr. Mcelroy or Mr. Martine.

MR. BRODSKY: No, it was not Mr. Martine, it is Mr. Mcelroy.

THE COURT: I did not get the page you gave.

MR. BRODSKY: 11,298.

THE COURT: The whole page?

MR. BRODSKY: The whole page.

11,314 and 11,315.

THE COURT: 15.

MR. BRODSKY: 15, that is all with respect to Frank Fay.

THE COURT: Mr. Bashian, were you able to follow this request?

MR. BASHIAN: I was, your Honor. The first reference to 10,945 --

THE COURT: Line 15 through 17.

MR. BASHIAN: This is where Mr. Fay was asked:

"Did you tell the FBI you had no information concerning any fraudulent mortgages?

"Answer: Yes, sir.

"Question: Did you tell the FBI if there were, if you knew of such, they would certainly not be handled by Eastern?

"Answer: Yes.

"Question: Did you tell the FBI you knew of problems with Kapraki mortgages?

"Answer: Yes."

I think it is somewhat incomplete. At another point in his testimony, to my recollection, Mr. Fey said that this was a lie, that he told the FBI --

MR. BRODSKY: Go ahead and put it in.

THE COURT: What has this to do with the state of mind of Mr. Bernstein? If the jury wants anything else, we can get that. We are getting involved in something else here.

MR. BRODSKY: This goes to the fact whether he spoke to Harry Bernstein at all, about this, and I say he never spoke to Harry Bernstein, that is my

contention.

THE COURT: I am sure that is your contention.

MR. BRODSKY: Now, you say does that go to the state of mind of Harry Bernstein, if he did not speak to Harry Bernstein.

THE COURT: Is there any conversation there in that quote, that has to do with Mr. Harry Bernstein, other than a deduction that you are making now, that from that, there was no conversation.

MR. BRODSKY: Not only from that.

THE COURT: He is talking about a conversation with the FBI?

MR. BRODSKY: Right. Judge, you cannot take one isolated conversation, you take the whole picture, Judge.

THE COURT: Why don't you read your entire cross examination. You would like that, wouldn't you?

MR. BRODSKY: I would love it.

THE COURT: And I would read the entire direct examination of the Government, too.

MR. BRODSKY: It would be my pleasure.

THE COURT: I am sure. Except, I am not going to protract this trial any longer than it is, and I am going to give the jury so much and no more than that which they require.

MR. BRODSKY: All I want your Honor to do is to give the jury so much, so that they can get at the truth of the matter, nothing more, nothing less, that is all.

THE COURT: That is exactly what I said, I am glad you limit my words.

MR. BRODSKY: Togive a true picture, Judge.

THE COURT: Yes, but not extraneous matter. What do you say about these particular pages, Mr. Bashian?

MR. BASHIAN: I do not disagree with everything Mr. Brodsky says. I do as to 10,945, to 946.

THE COURT: Those are the two we are talking about.

MR. BASHIAN: I disagree with that.

THE COURT: Line 15 to 17.

MR. BASHIAN: I disagree.

THE COURT: Line through four on the next page.

MR. BASHIAN: Yes.

THE COURT: I ask you do you object and you said you are not entirely objecting.

MR. BASHIAN: There are other things Mr. Brodsky referred to which I think are proper,and I do not object to those.

MR. BRODSKY: Thank you.

THE COURT: That does not have to do with these two pages.

MR. BASHIAN: No.

THE COURT: But as to those two pages.

MR. BASHIAN: I disagree with Mr. Brodsky, I do not think they should be read.

THE COURT: From what I gather from what you read, and I am assuming you are reading the transcript correctly, I am not going to have that read.

Next, 10,985 to 10988, which is approximately 13 or 14 pages, which would be on January 31.

MR. BASHIAN: The beginning part of this page refers to the letter which Mr. Fey wrote to the FHA, dated December 3, 1968, complaining that a fee man, tried to snare Mrs. Kapraki away from Eastern.

It goes into a somewhat technical discussion that Mr. Broadsky and Mr. Fey had concerning when this winter season began.

THE COURT: Which had to do with the question of timing and knowledge during that period of time.

MR. BRODSKY: Can I answer that, your Honor?

MR. BASHIAN: And we then go on to page 10,991, where I think that this is proper. Mr. Brodsky says:

"Did you tell the FBI you initially were made aware of the Kapraki problem through Hank York?

"Answer: If it is there, I guess I did."

On page 10,992:

"Isn't it a fact you told him that Hank York was the one that called it to your attention?

"He was one of the people."

"Question: And then in the spring of '69, you said you saw and spoke to Mr. Bernstein about it?

"Answer: Right.

"Question: Was it March, April, May, June, when was it?

"Answer: I don't remember.

"Question: You don't remember?

"Answer: No."

THE COURT: I think that is all proper.

MR. BASHIAN: I think it is proper, your Honor.

THE COURT: I will allow that whole segment, 10,985 to 10,998.

MR. BASHIAN: I do not think it should start until 10,991, but I will abide by your ruling, your Honor.

THE COURT: What was that?

MR. BASHIAN: I do not think 10,985, I do not think it is relevant, until 10,991, but I will abide by your Honor's ruling.

THE COURT: No, I think it was all continuous

cross examination, and it involved that same subject matter, so I will allowthat to be read.

Now, then, Mr. Brodsky also referred to Mr. McElroy's cross examination on page 11,298, all of that page.

MR. BASHIAN: That page consists of reading by Mr. McElroy of a memorandum dated June 16, signed by , I think it is Sharkey, which makes mention of the fact York is going to come aboard Eastern on Monday, June 30.

THE COURT: I think it ties in with the others, and I will allow it.

MR. BASHIAN: No objection, I think it is proper.

THE COURT: Then he also mentioned 11,314, and 11,315 in their entirety.

MR. BASHIAN: Well, 11,314 begins with Mr. McElroy asking or reading questions and answers from previous testimony.

THE COURT: Perhaps you had better zero in on a line, Mr. Brodsky.

MR. BASHIAN: The bottom part of 11,314.

MR. BRODSKY: 11,314 beginning with line 23, Judge.

MR. BASHIAN: "Did you ever bring a particular

file for specific transaction to Mr. Bernstein concerning Mrs. Kapraki?

"Answer: No."

I think that is clearly proper.

MR. BRODSKY: And the balance of 315 up to the word "No" on line 7.

THE COURT: All right. That I will allow to be read. Mr. McEvoy?

MR.MCEVOY: As long as you are in the 11,300 series, I turn to page 11,309, I am sorry, 307, line 23, continuing through 11,309, line 20.

THE COURT: Are you with him, Mr. Bashian?

MR. MCEVOY: Mr. Bashian has requested the reading of 11,273 amongst others, which takes the timing of the conversation as either occurring between or subsequent to one or the other of the two conversations. This is further inquiry of Mr. Fey as against that timing as to when he talked to Mrs. Kapraki about the Blow statements because that is the subject of 11,272-73. He goes so far as to say it might have conceivably occurred at the end of 1969 or even into the Kapraki hearing of May 1970, so I think the timing aspect is critical.

MR. BASHIAN: What you have here on page 11,309 is that Mr. McElroy, through questioning Mr. Fey, has

got Mr. Fey to say that his discussion with Mrs. Kapraki where he told her that Blow was no longer acceptable might have been subsequent to the time that he testified in the State licensing procedure, whichwas March, 1970. If we are going to read this, this is not all the testimony on this point. There is testimony from Kapraki to the effect it was in March 1969, that she was told by Mr. Fey that Blow was no longer acceptable,that she had to get a new accountant, and indeed, Abad's accounting papers did start showing up in the latter part of March, 1969, not March of 1970.

I would question whether this is really relevant to the inquiry involved, or whether this is getting a little tangential at this point. I think we have given the jury quite enough between Mr. Brodsky's cross and direct and redirect. I do not think it is necessary. We are going into something of a new field that is pinpointing the date of the Fey conversation with Kapraki. If we are going to give them this, I think we have to give them Kapraki's testimony where she saysit was March 1969, because this is something completely new and different.

THE COURT: Yes, it is an issue created by the two, and they do not apparently want Kapraki's testimony from the tenor. In fact, in my request to them to

send me a new request, I specifically said, do they want Mrs. Kapraki.

MR. DEPETRIS: That was with respect to falsity.

THE COURT: They know what they are asking for.

MR. DEPETRIS: Apparently, they do not want this if that is the theory, because that is the conversation between Fey and Kapraki. If we are going into a conversation between Fey and Kapraki, we have to do it from both sides.

THE COURT: I think that is a fair objection, Mr. McEvoy.

MR. MCEVOY: I do not, but obviously your Honor is prepared to rule.

THE COURT: I feel that it is no.

MR. DEPETRIS: I have the page cites on that, if your Honor wants it.

THE COURT: I am not going to allow it. I do not believe that is what they want.

MR. OBERMAIER: Would your Honor tell the jury that none of this testimony may be considered against the defendant Dun and Bradstreet, Arthur Prescott, and Herbert Cronin. I do that for two reasons. First, I think that was the basis of the admission of the

testimony during the course of the trial and your Honor issued a limiting instruction.

THE COURT: Which I again reminded them of before they sent out this instruction, this request rather.

MR. OBERMAIER: I do not recall that.

THECOURT: When I said bear in mind, the limiting instruction that his testimony was received with respect to this state of mind and the state of mind with those he had conversations with.

MR. OBERMAIER: That was Mr. Bernstein. We are talking about Mr. Fey's testimony.

THE COURT: I was talking about Mr. Fey.

MR. OBERMAIER: If that is true, then there should be no reason why you should not tell them again.

More importantly, during the course of your Honor's charge, at page 21,299, the transcript reflects that you omitted the name Dun and Bradstreet, when you said the following --

THE COURT: What is that in my charge?

MR. OBERMAIER: I am reading now from the charge.

THE COURT: What day was that?

MR. OBERMAIER: This would be the 13th of June, which was the first day of the charge, I believe,

your Honor.

THE COURT: What line?

MR. OBERMAIER: 21,299 is the page. I have reference to the statement that begins on line 10 on that page , and particularly focusses in on the statement that appears between line 15 and 18. There you say:

"The evidenceof these conversations is solely to be considered on the question of the witness' state of mind, or in the case of conversations with other employees of Eastern Service, the state of mind of the other participants."

Here is the part that I come to focus in upon, and I am quoting:

"I told you at that time, that the testimony of Mr. Fey must not be considered by you as against the defendants Arthur Prescott, Herbert Cronin and Joseph Jankowitz."

THE COURT: Well, that is not part of what may be read today.

MR. OBERMAIER: I am asking your Honor to reread that part.

THE COURT: In other words, add to their request.

MR.OBERMAIER: Tell them the testimony as they

are receiving --

THE COURT: Telling them is adding to what they want to know. Am I correct or No?

MR. OBERMAIER: No, I do not think so. I ask your Honor to tell them --.

THE COURT: I know what you are asking me to tell them. I am asking you what hasthat to do with the request.

MR. OBERMAIER: Your Honor will be reading testimony, and in the charge, you inadvertently, I assume, omit the name Dun and Bradstreet.

MR. BASHIAN: I would agree with Mr. Obermaier to this extent, that is, that the testimony which you will read to the jury as we have decided upon it now, from Mr. Fey, that testimony has nothing to do with Dun and Bradstreet, nor Prescott, but there are portions of Mr. Fey's testimony that does deal with Dun and Bradstreet, in the sense it deals with Mr. Prescott's state of mind.

THE COURT: That, we will be reading --

MR. BASHIAN: Not we will be reading, but if you come up with a sweeping statement, none of Fey's testimony is applicable to Dun and Bradstreet.

THE COURT: I do not intend to.

MR. BASHIAN: That is what I mean. The

testimony you have thus far agreed or decided to read, is not applicable against Dun and Bradstreet, but I do not want the jury --

MR. MARTINE: Or Cronin.

MR. BASHIAN: Or Cronin, we are not talking about it, but if you give a sweeper about Fey's testimony to the jury, may I say we cannot consider the testimony of Mr. Fey.

THE COURT: I will not do that.

(Continued on next page.)

MR. OBERMAIER: I would ask your Honor to tell them what you are about to read may not be considered by you against the defendants Dun & Bradstreet, Arthur Prescott, and Herbert Cronin.. That is my request.

THE COURT: And I say to you as I said a few minutes ago, that I have already indicated to the jury that the testimony of Mr. Fey was accepted on a limited basis only, as to the state of mind and that to me, excludes everybody else. And I am not going to say it does not apply to this one or that one, because I am going to get to the point, I have to do a lot of other explanations, and I am not going to do it.

I will give the jury just what they want and no more and no less.

MR. MARTINE: May the record indicate I join in Mr. Obermaier's request.

THE COURT: Yes, and the ruling is the same as to your request.

MR. BRODSKY: One think I omitted that was for your Honor to read to them, which was done at the time of the trial, Defendant's Exhibit DH in evidence, that is the date when Henry York commenced employment.

THE COURT: Is that part of what we are going to read?

MR. BRODSKY: Yes, Judge, when I asked Fey, and I showed him the exhibit at that time, it was for identification, and I asked him if he knew the signature, and he said he did not know the signature, but later on it came into evidence, in addition to the letter which your Honor will read to the FHA, and the memorandum.

THE COURT: Am I reading the letter to the FHA? Is that part of it?

MR. BASHIAN: Your Honor, I would respectfully submit --

MR. BRODSKY: You said you would.

THE COURT: I did not say anything about a letter. If the testimony makes refernce to a letter, that does not mean I said I would read a letter.

MR. BRODSKY: The letter is in the testimony.

THE COURT: That is different. Is this in the testimony?

MR. BRODSKY: Yes, on York.

MR. BASHIAN: Your Honor, this is a document and I would respectfully submit --

THE COURT: They know about these documents.

MR. BASHIAN: I hope I will not be accused of being overly technical. These are documents, some of which were introduced through Mr. Fey and some

introduced otherwise. I think when we get into the question of documents, we are going outside the juror's request. If we are going to give them documents of the viva voce testimony, of Frank Fey, I submit we should give them also the delinquency checks which came in with Mrs. Kapraki.

THE COURT: I know. I am aware of what one leads to the other.

MR. BRODSKY: Judge, the question arose here and cross examination arose --

THE COURT: It will be mentioned in the reading of that testimony, and if the jury wants it after they have heard that testimony, they will send in another request. It is very apparent to me, this jury is no child-like jury, they know what they are doing. I am going to leave it to them.

MR. BRODSKY: Absolutely. I say, to make the picture complete --

THE COURT: I am not going to get involved reading other things not in the testimony, and if it is in the testimony, then I will read that part, but I am not going to go beyond that testimony and read an exhibit.

MR. BRODSKY: Judge, as part of the cross examination --

THE COURT: Don't I make myself clear?

MR. BRODSKY: You make yourself very clear, but I say to your Honor, as part of the cross examination of Mr. Fev, this exhibit was shown to him and he said he did not know the signature.

THE COURT: The testimony will be read and it indicates that it was shown to him. That does not mean that now I am going to have you read it. If they want it, they will ask for it. No -- let us get going.

MR. BRODSKY: I respectfully except.

THE COURT: I am not going to make this jury waste a lot of time waiting for us while we wonder about what we should or should not be doing.

MR. BRODSKY: I am sure they are not wasting time, they are going to other matters.

THE COURT: I am wasting time, because I am not answering their questions, put it in that light.

Now, Mr. Rosenkranz, what have you got to say?

MR. ROSENKRANZ: I want to renew my application to have that stipulation read, which your Honor said you would consider.

THE COURT: I did not say I would consider, I said I would hold up my decision on that. You know what stipulation he is talking about?

MR. DEPETRIS: It relates to Mrs. Kapraki.

THE COURT: I will not allow it then, any more than I allowed the others. If they want the stipulation, it will be read.

Bring the jury in.

(The jury took its place in the jury box.)

THE COURT: Ladies and gentlemen of the jury:

I am going to ask the Reporter to read portions of Mr. Fey's direct testimony first, and it appears in the transcript of January 29, 1974, at page 10,775, starting at line 19, and I refer the reporter to a red line on that page, where she will begin to read, going right through 10,782, line 21, where again I put a red line. We start there first.

(The testimony was read by the Reporter from page 10,775, starting at line 19 and through page 10,782, line 21.)

THE COURT: We will next read Mr. Fey's testimony --Mr. Brodsky's cross examination of Mr. Fey, starting at page 10,985 and that would be January 31, starting at 10,985 through 10,998, line 25.

(The Reporter read the transcript at the pages above indicated.)

THE COURT: Well, that is all the testimony so far anyway, that appears between and including those

pages and I marked it at the beginning and end by red lines.

I want to tell the jury. We will start with Mr. Fey's cross examination by Mr. Brodsky.

(The Reporter commenced reading.)

THE COURT: I want to tell the jury we have other testimony of Mr. Fey to read, involving cross examination by Mr. McEvoy. But if at any time, during the reading of anything during this period, when we are now answering your last request, if you have heard what you want to hear, just let me know, and we can stop there or continue.

(The Reporter continued reading the transcript).

THE COURT: If any of you, and it does not have to be all of you, if anyone wants to continue, we continue. It is only if all of you want to stop, that we will stop.

We will now go to the transcript of February 4, starting at page 11,272, starting with line 12, where I have placed a red line, and going to page 11,273, line 21, where I have placed a red line.

THE FOREMAN OF THE JURY: They have had enough of the reading of testimony; they would like to hear your charge.

THE COURT: As far as the testimony is concerned,

do you all fee the same? Is there anyone that wants to continue? I see no hand up, and therefore, we will not continue with the testimony. We will go to the charge.

May I ask now, that is the charge, with request to the 1010 charge, the false statement charge, and the Section 2, is that right?

THE FOREMAN OF THE JURY: Right.

THE COURT: We can do that.

MR. ROSENKRANZ: May we approach the bench?

THE COURT: No, sir. When I start with something, I will not take it during the course of answering a question of the jury.

MR. ROSENKRANZ: It concerns this.

THE COURT: Has it to do with my charge?

MR. ROSENKRANZ: Yes, it does.

THE COURT: Let me find out what they want first, and then I will talk to you.

I can tell you what I began with for the purpose of this trial. Mr. So-and-So is charged with violations of 1010, in count two.

Can you pinpoint where I began?

MR. DEPETRIS: Page 21,413, I think, you begin the false statement.

THE COURT: That is the place.

We begin with my charge, which begins on page 21,413, where I put a red line, and we will keep going, and I will follow my notes, and when I tell you to stop, you will stop.

MR. BASHIAN: Your Honor, Judge Platt is waiting for me. Can I be excused?

THE COURT: We will just be reading the charge, you may be excused.

MR. BASHIAN: I will be back as soon as I can.

THE COURT: Mr. Rosenkranz, never let it be said, even when you are not supposed to ask a question, I will let you ask a question of me quietly in my ear.

(Continued on next page)

THE COURT: Now, Madame Reporter, you may start page 21,413, where I have placed a red line and nice and loud and slowly, so the jury can follow.

(The transcript was read until page 21,423, line 10).

THE COURT: It should be "in" at line 10. Is there any objection if we read the word "in".

MR. BRODSKY: It makes sense to put the word in.

THE COURT: It should be "and in deciding --"

(The reporter continued reading to page 21,426, line 19.)

MR. BRODSKY: That is the way it was given.

MR. DE PETRIS: It is clarified.

MR. BRODSKY: It was charged that way and that is the way it was given.

THE COURT: Except the charge with regard to that was modified and was modified to the jury.

MR. BRODSKY: Later.

THE COURT: That is all right. I would just as soon that the modification be inserted at this time, so we will have it in context.

Where was that modification, what page?

MR. DE PETRIS: Page 21,618, line 13 through --

THE COURT: What date?

MR. DE PETRIS: The date is June 17.

THE COURT: What page?

MR. DE PETRIS: 21,618, line 13 through 25, through the end of the page.

THE COURT: Madame Reporter, I will ask you at this point to read page 21,618, starting at line 13, where I placed a red mark to the bottom of that page.

(The transcript of the charge and modifications was read).

THE COURT: Do you want me to go into the definition?

THE FOREMAN OF THE JURY: Yes.

(The reporter continued reading to page 21,429 line 21).

THE FOREMAN OF THE JURY: Your Honor, I think the jurors all consider that was sufficient.

THE COURT: I think I might interject at this point, I stopped, because then I went into each of the 2900 applications that I used to circle the alleged false statements, and made certain parts of my charge relative to those statements. If you want to hear them, I will be glad to go through that and then on Monday, I went into the Section 2 aspects of it.

JUROR NO. ONE: If we want it, we will ask.

THE COURT: Is that agreeable to everybody, if you want more, you will ask?

I see no hands up, indicating to the contrary, so we will stop right there.

Do you have the two files?

THE FOREMAN OF THE JURY: We have them.

THE COURT: Have you made the calls you were supposed to make for the two jurors?

THE MARSHAL: Yes.

THE COURT: We are up to date.

THE MARSHAL : Lunch is due in five minutes.

THE COURT: You may return to the jury room and continue your deliberations. If there is more you want, just ask. In the interim, I will let the lawyers go out at one o'clock, so that the lunch period will coincide. I have already told the Marshal, as you know, that after you get through with your lunch, you can take your usual stroll through the park and enjoy it. In the meantime, continue your deliberations. You are excused,

(The jury left the courtroom)

THE COURT: Gentlemen, until two o'clock.

(A recess was taken until 3:10 P.M.)

THE CLERK: Note from jury marked Court Exhibit 39, and note from jury marked Court Exhibit 40. Note from jury marked Court Exhibit 41; so marked.

THE COURT: The first two, I will dispose of when the jury comes back, for some reason, if it is necessary to bring them back. But I shall read them anyway.

Number 39: "Would it be possible for me to attend my son's graduation, from Lafayette High School on Tuesday at 10:30 A.M.?

"I will be in Court by " blank, and then thank you.

That is from juror, number six, Mrs. Kaplan. We will take care of it when we get a chance.

Court Exhibit No. 40: "Honorable Judge Travia: I would appreciate it if we could recess on Monday June 24, at three P.M., as my son is graduating from high school, and I would like to attend." From Juror No. 4.

This one we can take care of now, marked Court Exhibit 41. The jury requests the checks from Kapraki to Eastern Service, in payment of arrearages on mortgages. Who would have them?

MR. MCEVOY: I have them right here, they are Government Exhibits.

THE COURT: How many are there, do you know?

MR. MCEVOY: I make seven, your Honor.

MR. ACCETTA: They are marked as Governments' Exhibit 163A, 163B, 163C, 163D, 163E, 163 and 162.

THE COURT: 163 and 163 A through E.

MR. ACCETTA: And what is apparently 162.

THE COURT: You have 162 there also?

MR. ACCETTA: Yes, your Honor.

THE COURT: Does that jibe with you, Mr. McEvoy? Exhibits 162, 163 and 163A through E.

MR. MCEVOY: Yes.

THE COURT: A total of how many?

MR. ACCETTA: Seven.

THE COURT: I will send them in. There is no necessity to call them here to hand them these checks. Is that all right?

MR. BRODSKY: Yes.

MR. MCEVOY: Yes.

THE COURT: Mr. Marshal, will you please deliver these checks, and tell them that the other two notes we will answer later on in the day, when we bring them in.

MR. MCEVOY: I apologize for interrupting. I note in the transcript there is another check.

THE COURT: Mr. Accetta?

MR. MCEVOY: The transcript at 4,733 indicates Exhibit 164, dated May 14, 1969, in the matter of 1910 dollars received in evidence.

THE COURT: Do you have it?

MR. DE PETRIS: Yes, your Honor, there is a check and check stub.

THE COURT: Was the stub received?

THE CLERK: 164A, Judge, is the check stub.

THE COURT: Then 164 is the check?

THE CLERK: Yes.

THE COURT: I might as well send those in with it.

MR. ACCETTA: I think 164 B relates to it.

THE COURT: They want the checks. That is a compilation of the different checks.

MR. DE PETRIS: It is a statement breaking down the different checks.

THE COURT: Would you take a peek at it, Mr. McEvoy?

MR. MCEVOY: We have been pursuing a pattern of exactly what the jury asked for. The jury asked for checks, so I think we should just send them the checks.

THE COURT: Do we need the stub? I do not think so? I would just send in Government Exhibit 164.

MR. DE PETRIS: 164 without the stub is not a complete exhibit. They were presented together.

MR. SOVIERO: They asked for checks, not stubs.

THE COURT: The stub shows the breakdown of the nineteen hundred dollars.

MR. MCEVOY: We have been adopting rather a strict construction of what the jury asks for.

THE COURT: I will send in 164, and 164A.

MR. MCEVOY: I note the objection of Eastern Service.

MR. BRODSKY: We object.

MR. DE PETRIS: If there is an objection, we will leave them both out.

THE COURT: They are not objecting to both.

(Continued on next page.)

MR. MCEVOY: I object to the ledger page, this is not a game.

THE COURT: You are telling me it is not.

MR. MCEVOY: The jury has asked for the checks.

THE COURT: The only thing that is important is the upper part and lower part. Give the rest back to Mr. De Petris.

Mark them 164A-1 and 164A-2, being the upper and lower part of the check stub page, with reference to check number 842 and 844.

MR. MCEVOY: I object to that procedure as well.

THE COURT: Your objection is noted and overruled and I will send it in.

MR. BRODSKY: I object to that on behalf of Harry Bernstein, on the ground it is not in compliance with the jury's request.

THE COURT: Your objection is noted and overruled. I am sending it in.

MR. SOVIERO: I join in that objection, your Honor, if it please the Court.

THE COURT: All right, same ruling.

THE CLERK: Check stub number 842 from Government Exhibit 164, marked Government Exhibit 164A-1 in evidence. Check stub number 844 from Government Exhibit 164, marked Government 164A-2 in evidence.

MR. OBERMAIER: The record indicates those are from 1645.

THE CLERK: From 1645, thank you, Mr. Obermaier.

(A recess was taken until 4:05 P.M.)

THE COURT: I got the usual message that they are ready to go home because of that four o'clock business, and I will see about what I can do about the other notes.

Bring the jury in.

(The jury took its place in the jury box).

THE COURT: I do not know whether you will be so anxious to go right home right now, it is pouring, and I mean pouring. It is a torrential rain, so if you want to continue your deliberations, I will do so. But I know, on account of Pat -- I call you by your first name, you will wish to go home.

JUROR SCIACCA: I have to go.

THE COURT: I understand that, too. If it just has to be, it has to be.

However, you can understand too, that we have a job to perform, but starting Monday, we are going to go back to our 5:30 and maybe later, if it becomes necessary, because these delays make it difficult for everyone concerned.

I did receive a note from Mrs. Kaplan, which

was marked Court Exhibit 39. Let me take Mr. Fabiszak first. You left out a couple of letters, didn't you?

JUROR FABISCAK: Probably.

THE COURT: His note was marked Court Exhibit 40, and says: "I would appreciate if we could recess on Monday June 24 at three P.M., as my son is graduating from high school, and I would like to attend."

That would mean that on Monday, my desire to go beyond five thirty is out the window, as you wish to quit at three oclock. I do not like to say no, and I am not going to. We will hold up on that a minute. Then we have Mrs. Kaplan's note: "Would it be possible for me to attend my son's graduation from Lafayette High on Tuesday at 10:30. I will be in Court by ---

JUROR KAPLAN: One o'clock.

THE COURT: You did not say -- yes, I thought it was part of the T on that, thank you.

I will tell you what I will do. Well, we give you too much time or not enough. Will that be sufficient time?

JUROR FABISZAK: It takes me two hours or a little better to travel, and by the time I get home and dress --

THE COURT: All right. Can we start a little earlier on Monday? Is there any objection if we start

at nine thirty?

How about it, everybody?

We will recess until Monday at nine thirty, and we will adjourn or recess again at three o'clock, so that Mr. Fabiszak can make the graduation and then we will come back Tuesday at one o'clock, then from there on, I am just going to hang on to you until we all get tired -- okay. Then we will recess until Monday at nine thirty, and then we will take care of the time schedule after that, as it comes along.

Again, Miss Sciacca, I have ignored to say this to you, but on behalf of myself and everybody involved in this case, we would like you to extend to your mother and dad, our sincere condolences of the passing of your granddad. I want them all to know how much I appreciate particularly the fact, that I have been able to get you in here, even under those terrible conditions.

Now, since we are going to be away until Monday morning, which means tomorrow, Saturday, and Sunday, again I tell you to please insulate yourselves from everything. I told them to put a lot of stuff in that water last night, so there would not be any germs in that room, for fear somebody might get some kind of cold or something like that.

So insulate yourself from everything that you

can possibly do, and take good care of yourselves, and be back here Monday morning promptly at nine thirty so we can get going.

In addition, do not read any articles of any kind that might in any way have anything to do even inferentially with this case. Do not let anybody bring it to your attention, tell them not to do it if they start. Do not let anybody approach you about this case in any way. You are not to talk to anyone either connected with this case, or outside this case.

Do not discuss this case amongst each other, if not all of you are present in the jury room, for that particular case.

Anything you may want to talk about has to be said in the presence of each other, as I told you during the course of your deliberation, when twelve of you are present.

Do not foreclose any position that you may have without discussing it with your colleagues-jurors. Just keep your mind open and kind of stop at this point, and then Monday morning you come back and start at this point where you left off, so that you will be able to have the benefit of each other's thinking and opinions.

You are excused until Monday morning at nine

thirty. C 913

Good night.

(The jury left the courtroom)

THE COURT: I will see you Monday morning at 9:30. I trust you will stay here a little to let them get out of the building.

(Whereupon at four thirty o'clock, the trial was recessed until nine thirty A.M., Monday morning).

. . . . . .

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
JUL 5 1974
TIME A.M.
P.M.

----------x

UNITED STATES OF AMERICA, :

-against- :

HARRY BERNSTEIN, ROSE BERNSTEIN, EASTERN SERVICE CORPORATION, HERBERT CRONIN, FLORENCE BEHAR, DUN & BRADSTREET, ARTHUR PRESCOTT and MELVIN CARDONA, :

Defendants. :

72-CR-587

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United States Courthouse
Brooklyn, New York

June 24, 1974

B e f o r e:

HONORABLE ANTHONY J. TRAVIA, U.S.D.J.

and a Jury.

DANIEL D. SIMON
CHIEF OFFICIAL COURT REPORTER

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Appearances:

DAVID G. TRAGER, ESQ.,
United States Attorney
for the Eastern District of New York

BY: ANTHONY ACCETTA, ESQ.,
RONALD DePETRIS, ESQ.,
-and-
GEORGE BASHIAN, ESQ.,
Assistant United States Attorneys

ABRAHAM BRODSKY, ESQ.,
Attorney for Harry Bernstein

JOSEPH P. SOVIERO, JR., ESQ.,
Attorney for Rose Bernstein
-and-
LOUIS BERNSTEIN, ESQ.

ANDREW T. McEVOY, ESQ.,
Attorney for Eastern Service Corporation

BODELL, GROSS & McGOVERN, ESQS.,
Attorneys for Herbert Cronin

BY: LOUIS MARTINE, ESQ.,
Of Counsel

RICHARD I. ROSENKRANZ, ESQ.,
Attorney for Florence Behar

(continued next page)

Appearances: (Cont.)

WHITE & CASE, ESQS.,
Attorneys for Dun & Bradstreet

BY: OTTO G. OBERMAIER, ESQ.,
-and-
JOHN McAVOY, ESQ.,
Of Counsel
-and-
LINDA WERTHEIM, Assistant

PATRICK WALL, ESQ.,
Attorney for Arthur Prescott

IRVING J. KLEIN, ESQ.,
Attorney for Melvin Cardona

BY: MICHAEL, R. KLEIN, ESQ.,
Of Counsel

(10:45 a,m.)

THE COURT: I have a note and while I was waiting to come out, I got a second note, so we will take them in the order in which I received them.

The first we will mark Court's Exhibit number 42.

THE CLERK OF THE COURT: Court's Exhibit number 42 so marked.

THE COURT: And the second one will be marked Court's Exhibit 43.

THE CLERK OF THE COURT: So marked.

THE COURT: Court's Exhibit 42 says:

"The jury requests a copy of the stipulation or a listing of property addresses named in the stipulation regarding second mortgages assigned to Jack Warehouse."

We have already indicated to the jury previously when we had that stipulation read to them, that that stipulation was not in evidence, and that we would read it, which we did.

Now, apparently, we have to deal with it by either having it read again, or, if there is no objection, we will just get a clean copy of that listing, or get a copy of the transcript of those particular names, unless there is some other suggestion

to be made.

MR. SOVIERO: It was my understanding, if it please the Court, there was a direction by the Court to the United States Attorney's office to reproduce paragraphs--

THE COURT: Not to put it in evidence at the time.

MR. SOVIERO: There was a direction by the Court to reduce that stipulation to writing, sir, so it would be handled as an exhibit.

THE COURT: It was never done, it was never offered in evidence. They did reproduce it, but it was after the trial.

MR. ACCETTA: Your Honor, I have a copy of what Mr. Bashian read from when he entered the stipulation on the record. I would be prepared to have it typed in clean form if counsel consent to have this submitted to the jury.

THE COURT: I do not see why we should keep it a secret. It is in the record. All I can do is keep repeating it to them and have it read. If we can make it easier for them by having a clean copy of what is exactly in the transcript, provided it does not differ from the transcript in any way, I would not use mine, I can tell you that much, as I made notes on mine

and asked certain questions at the end of the stipulation with regard to it.

MR. ACCETTA: The only difference would be, from the transcript, is the form that Mr. Pashian read from, the list which lists them by property, and there is somelanguage in the first portion of the stipulation which does not appear inthe rest of them, but which he read as he went through it.

MR. McEVOY: Why don't we simply Xerox the transcript pages with respect to the stipulations read?

THE COURT: That is exactly what I would like to do. If there is no objection to that, let us get that portion of the transcript and Xerox what I read to them, or what the reporter read to them in their previous request,and that would be the easiest way. Then we do not have to worry about then whether there is a word more on that or less, on the copy which I do not want to give them.

MR. ACCETTA: Very well, your Honor.

THE COURT: They have only to get that which is orally stipulated. As far as I was concerned, that was an oral stipulation. If -- of course, nobody could remember the properties, there were so many of

them. I know I do not, and I think it would be not easy for any one of us to remember each of those properties, and if we can help the jury, I think we should, so I am going to direct you immediately to photocopy the particular pages. Let us agree upon which pages they are, so we will have them, because I asked at the end of the stipulations certain questions with regard to one or two of them, as to the time or date or something like that, where there was a date missing, or whether it was a correct date.

MR. ACCETTA: I will do that right away.

THE COURT: The second one is Court's Exhibit 42 wherein the jury requests the files on 17 files, and one is 371-12th Street.

Tony, do you have your sheet, so I will not have to look at mine?

And we can see what exhibit it is.

371 12th Street.

THE COURT CLERK: That is number 83.

THE COURT: That is Exhbit 83.

THE COURT CLERK: Right.

THE COURT: 190 Adelphi Street.

THE COURT CLERK: Exhibit 87.

THE COURT: 185 Sackman Street.

THE COURT CLERK: Number 88.

THE COURT: 356 Van Siclen Avenue.

THE COURT CLERK: Exhibit 89, Judge.

THE COURT: 312 Milford Street.

THE COURT CLERK: Exhibit number 91.

THE COURT: 340 Van Siclen Avenue.

THE COUPT CLERK: That is number 92.

THE COURT: 616 Schenck Avenue.

THE COURT CLERK: Exhibit number 94.

THE COURT: 381Douglas.

THE COURT CLERK: Number 102.

THE COURT: 726 Snedeker.

THE COURT CLERK: 103.

THE COURT: 328 First Street.

THE COURT CLERK: 107.

THE COURT: 452 Miller.

THE COUPT CLERK: 111.

THE COURT: 454 Miller.

THE COURT CLERK: 113.

THE COURT: 617 Vermont.

THE COURT CLERK: 119.

THE COURT: 741 Sheffield.

THE COURT CLERK: 120.

THE COURT: 17 Wyonia Street.

THE COURT CLERK: 121.

THE COURT: 1034 Blake Avenue.

THE COURT CLERK: 124.

THE COURT: That is a total of 17 files.

As you get them, inform me and we will send them in, and as soon as I get that copy of the transcript and these 17 files, I will send them right in without the necessity of my calling in the jury.

MR. ACCETTA: Would you repeat 371 12th Street?

THE COURT: 83.

My Clerk just came up with a bright idea which I think might zero in on the particular pages of the transcript. The note the jury sent previously regarding that, we read the whole thing on that day, so we might use that one, the pages of the transcript.

MR. KLINE: He was reading.

THE COURT: I do not think they take them down. I think the record shows the reporter then proceeded to read the pages, so-and-so. It was a good idea, however.

MR. McEVOY: In the transcript, there are pages 15441 through 15454, as remarked by the Court. It is based on Court's Exhibit number 29, the jury request.

371 12th Street is 83.

THE COURT: Right.

MR. McEVOY: 190 Adelphi is Exhibit 87?

THE COURT: Right.

MR. McEVOY: 185 Sackman is Exhibit 88?

THE COURT: Exhibit 88, right.

MR. McEVOY: 356 Van Siclen is Exhibit 89?

THE COURT: Right.

MR. McEVOY: 312 Miller is Exhibit 91?

THE COURT: Exhibit 91, right.

MR. McEVOY: 340 Van Siclen, Exhibit 92.

THE COURT: Right.

MR. McEVOY: 616 Schenck is Exhibit 94?

THE COURT: Right.

MR. McEVOY: 468 Miller is Exhibit 98?

THE COURT: Right.

MR. McEVOY: 381 Douglas is Exhibit 102.

THE COURT: Right.

MR. McEVOY: 726 Snedeker, Exhibit 103.

THE COURT: 103, right.

MR. McEVOY: 328 First Street, Exhibit 107.

THE COURT: Right.

MR. McEVOY: 452 Miller, Exhibit 111.

THE COURT: 111, right.

MR. McEVOY: 454 Miller, Exhibit 113.

THE COURT: Right.

MR. McEVOY: 617 Vermont, Exhibit 119.

THE COURT: 119, right.

MR. McEVOY: 741 Sheffield, Exhibit 120.

THE COURT: 741 Sheffield, Exhibit 120, right.

MR. McEVOY: 17 Wyona, Exhibit 121?

THE COURT: 121.

MR. McEVOY: 1034 Blake, Exhibit 124.

THE COURT: 124, okay, that is the 17 files.

MR. MCEVOY: Can we scan them quickly and make sure there is nothing extraneous contained in the files?

THE COURT: Did you get the pages?

MR. DePETRIS: Yes.

THE COURT: We started at 15441, where my red line would appear, with the word, Mr. Bashian, "At this time I would request" -- starting there and going to 454, ending with Mr. Bashian, "That is correct, your Honor."

MR. McEVOY: Yes, sir.

(A short recess was taken)

MR. OBERMAIER: There are Exhibits in there and not exhibits. At the time these were

offered, your Honor said that you would be concerned only with,or the government would be concerned, only with the 2800 forms and the related documents. The Court said at page 12026, "I am going to accept the whole file. If any part of that file becomes a question that may raise an issue of prejudice, and inadmissible, I will allow an objection again to be made as to any particular paper. If the time comes when it goes to the jury, if it goes to the jury, I will be glad to extract from the file that which we feel is not a proper part of the exhibit."

(continued on following page)

THE COURT: Right.

MR. OBERMAIER: "For the time being I am taking the whole file."

The Court went on to say: "You do not have to do it now until the question is raised. For the time being all I will permit to be used even though I accept them into evidence is the folder itself and the 2800 form and anything that relates to the 2800 form such as a request for re-examination or re-evaluation and facts surrounding it."

I think from the point of view of my client I have to look at the files.

THE COURT: You may look at every one and if you find anything objectionable let me know. As we get through with them I would like to have them so I can start sending them in. I am not going to let them wait until you look through 17 files and every paper therein as that could take the balance of the day. I am not going to delay this jury from considering the case to that extent, so that if we can get a file complete I will send it in. At least you can start working on that one.

MR. OBERMAIER: I have no objection to the 2800 forms.

THE COURT: No, the whole file goes in. We

have allowed the whole file to go in up to now and no objection has been raised such as you are raising now. Since you are raising it now as to these 17 files I will permit you to go through each of these 17 files.

MR. OBERMAIER: If your Honor please, I raised an objection at the time the colloquy ensued at the time these were offered at page 12025.

THE COURT: I listened very carefully to what you were reading. I said I would extract from those files anything I thought might be prejudicial and you show it to me and I will extract it. Otherwise that file goes in in its entirety.

MR. SOVIERO: Along those lines, if it please the Court, without making a specific objection to specific files, I know some of these files have fore-c-osure papers and the history of the foreclosure. I submit that may be prejudicial and I move that be extracted from the file.

THE COURT: No, I do not think so. I think it is all part of the file which is relevant and I will take it.

MR. MARTINI: May I join in that application and take an exception?

MR. SOVIERO: I respectfully except.

MR. MC EVOY: I join in that objection to the

submission of any foreclosure papers. Since these files are under the bribe counts the only things relevant would be the appraisal aspects of the file.

THE COURT: I do not know if it is just the bribe counts. Are those only bribe count files?

MR. MC ILVOY: Bribe and overevaluation.

MR. MARTINI: That is correct, your Honor, as Mr. McIlvoy states.

MR. MC ILVOY: The credit is not relevant to any issue in those cases as I understand.

THE COURT: I do not know what they want. They want the files in.

MR. BRODSKY: I join in the objection.

MR. BOGUMPANE: And I join in the objection.

MR. DE PETRIS: I would request rather than a general objection a specific objection made with respect to a specific file.

THE COURT: As you are looking at the file make your objection as to each file. Give it to Mr. Obermaier and you look at it.

MR. SOVIERO: Exhibit No. 91, if it please the Court.

THE COURT: How about the photocopy of those pages? We might be able to send in that.

MR. ACCETTA: I am going to have that done

now, your Honor.

MR. SOVIERO: Exhibit 91 contains a portion of the file which deals with foreclosure procedures and I would request that portion be excised from the file.

THE COURT: Show it to Mr. DePetris.

MR. DE PETRIS: Hold it out and we will look at whatever files you have an objection to and we will deal with them separately.

MR. SOVIERO: Exhibit No. 92 also contains a foreclosure file.

THE COURT: Hold that aside.

MR. SOVIERO: I make the same application.

MR. MARTINE: Mr. Martine joins the application by Mr. Soviero.

THE COURT: Are those okay, the transcript copy?

MR. MARTINE: I find it acceptable, I do not know about the rest.

THE COURT: Mr. McEvoy, Mr. Martine says the pages that were directed to be photocopied that have to do with the assignments of mortgages is okay as far as he is concerned. Do you want to take a peek at it so I can at least send that one in?

MR. MC EVOY: No problem there.

THE COURT: May I have it please. Tony, would you staple those pages.

MR. SOVIERO: Exhibit 94 in evidence we find a small piece of red paper which seems to bear no relevance to the file at all. It has "Rush" on it. It is loose in the file and I object to it being in.

THE COURT: Leave it in the file and your objection will be noted and we will take them up all together. Put that aside.

Tell the Marshal to tell them we are gathering together the files and as soon as we have the files we will let them have it. In the meantime, this is in answer to their one request.

MR. SOVIERO: If your Honor please, Exhibit No. 98 also contains foreclosure evidence and I respectfully move those be excised from that exhibit.

THE COURT: Hold that aside.

MR. MARTINI: I join in that application, we all do.

THE COURT: The same persons who objected originally will be noted as continuing their objection.

MR. MARTINI: Thank you, your Honor.

THE COURT: I am asking Mr. Soviero to point out the particular files and the objection will be joined by those who indicated they would join in the

objection.

MR. DE PETRIS: We have no objection to the removal.

THE COURT: With reference to Mr. Soviero's objection?

MR. DE PETRIS: Yes, your Honor, we have no objection to the removal of the foreclosure papers in these three files. he has pointed out thus far.

As to the other file, the objection was to a document which was a part of the file.

THE COURT: That little red paper.

MR. DE PETRIS: That little red paper and that is a part of the file.

THE COURT: What does that small red paper represent?

MR. SOVIERO: Why doesn't your Honor look at it? May I respectfully request your Honor look at it?

THE COURT: At least he is learning. It took nine months, the whole period of gestation.

If you look at the other side it says "re-open request" date received 8/28 and then it says "rush E."

As far as I am concerned that is a part of the file.

MR. SOVIERO: It has no number on it, if it please the Court, if looks like a piece of paper in

the file that has been cut in half. There is nothing to identify it as part of the file. There is no address on it.

THE COURT: Let me see if I can get the case number on the file.

MR. ACCETTA: This red document with the two holes in it was bound by the Acco binder and was in the file with the first part up, the "Rush E" part, and that is the part that was basically one with the file when it was opened and it was part of this file.

THE COURT: Except that when you turn it around it says OH5 077, date received 8/28, re-opened request, and it refers to a file that I just read differently than the file that is here. So I am not going to allow it.

MR. ACCETTA: It is no big deal but it was part of this file.

THE COURT: This is out as far as I am concerned. That indicates the case number and this case number apparently differs from the case number on the file so it is out. This one goes in without that paper.

Now the other three with respect to the foreclosures, the foreclosure papers will be taken out. Which three were they, Mr. Soviero?

MR. SOVIERO: I forget the numbers.

MR. DE PETRIS: Number 91, 92 and 93.

THE COURT: Would you remove the papers from the files, the foreclosure part.

MR. DE PETRIS: Mr. Saviero objected and I suggest he remove the papers he refers to. I am not sure what papers.

THE COURT: Get together and agree as to which is going out.

Have you had a chance to examine them, Mr. Obermaier?

MR. OBERMAIER: I have examined all the files discussed so far, your Honor.

THE COURT: In none of these files do they involve a count in which your defendant is involved, is that right?

MR. OBERMAIER: They do not, that is correct.

(continued next page)

THE COURT: I want to make sure I understood Mr. McEvoy. He said it has to do with bribery and overevaluation.

MR. MARTINE: They go in tandem, your Honor, Mr. McEvoy was right.

MR. SOVIERO: I know as a result of my examination there are only three files in which there are foreclosure proceedings.

THE COURT: Those were the three just mentioned.

MR. SOVIERO: 91, 92 and 98, and I am now proceeding to remove that portion of the file.

THE COURT: He is removing certain papers, Mr. DePetris, and would you see what he is removing.

MR. SOVIERO: I believe we have satisfactorily excised all the pertinent material from the files mentioned.

THE COURT: That was with reference to 91, 92 and 98.

MR. SOVIERO: Yes, your Honor. And 94, your Honor, the red slip.

THE COURT: Oh yes, as to 94 we excised the small red paper.

May I ask you, Tony, to put them in the order I read them so I can send them into the jury now.

Is there any further objection?

MR. MC EVOY: None beyond that previously stated.

THE COURT: That is with reference to the foreclosure papers.

MR. MC EVOY: Yes.

THE COURT: They have been excised and I have allowed that to be excised at the request of Mr. Soviero and he went through the files and they were excised.

Now Mr. Obermaier?

MR. OBERMAIER: On behalf of Dun & Bradstreet I think only the 2800 forms whould be in and related documents.

THE COURT: As I indicated to you side bar not on the record, none of these files relate in any way to the counts in which your defendant is named.

MR. OBERMAIER: Your Honor is correct.

THE COURT: I am going to allow the files to go in as they are with the exception of the excises that were made at the request of Mr. Soviero and Mr. McEvoy and Mr. Brodsky, I believe.

MR. SOVIERO: In addition to those excisions, your Honor, I would join in the application made by Mr. Obermaier and take an exception.

THE COURT: Mr. Soviero joins and the same

ruling.

Put them in the order as I give them to you.

Exhibit 83, 87, 88, 89, 91, 92, 94, 98, 102, 103, 107, 111, 113, 119, 120, 121 and 124 and would you please take those 17 folders and give them to the marshal for him to give to the jury and for them to continue their deliberations.

As to the rest of you, you can all go to lunch and come back at 1:00 o'clock and if I get a note in the interim I will tell them to wait until 1:00 o'clock.

We stand in recess until 1:00 o'clock.

(Whereupon at 12:00 noon a recess was taken until 1:00 o'clock P.M.)

(Continued next page)

AFTERNOON SESSION

(2:55 PM)

THE COURT: Mr. Obermaier, it is my understanding Mr. Wall will be delayed and unless it is necessary for him to be here you will pinch-hit for him and his client.

MR. OBERMAIER: That is correct.

THE COURT: I have a request which will be marked Court Exhibit 44 which reads, and keeping in mind we are supposed to adjourn at 3:00 for Mr. Pabiszak: "The jury requests the testimony on count--" it must be 37. They have a 7 like a capital S and then semicolon, "570 55th Street and the testimony on count 62; 741 Sheffield Avenue."

I assume we have to start with first Mrs. Kapraki's testimony concerning those two properties or I will ask them.

MR. DE PETRIS: Count 62 is Goodwin. Count 37 is Kapraki's testimony.

THE COURT: I will ask them. In the interim we can pull the stuff together and give it to them tomorrow when they come back at 1:00 o'clock.

Call in the jury.

(The jury took its place in the jury box.)

THE COURT: Ladies and gentlemen of the jury:

Bearing in mind our understanding about 3:00 o'clock for Mr. Pabisual, I cannot comply with this request today and since Mrs. Kaplan has her other problem for tomorrow morning and will not be in before 1:00 o'clock, I suppose the answer to this must go until tomorrow at 1:00 o'clock. In the meantime we can corral the testimony necessary to comply with this request.

The first request, the testimony on count 37 concerning 570 55th Street, that involves Mrs. Kapraki's testimony and whatever cross-examination there was with regard to it, and then on count 62, 471 Sheffield Avenue, that involved Mr. Goodwin's testimony and whatever cross-examination there was with regard to that.

Am I on the right track?

THE FOREMAN: That is correct.

THE COURT: We will get it together and by the time you get back tomorrow afternoon at 1:00 o'clock I will have it all ready for you. We will call you in as soon as you come in and start reading it. You will be excused for the balance of this day and remember the admonition, of course, it is very important. Do not have anybody approach you in any way and keep your minds open and free until you get together tomorrow afternoon when you can discuss it in the presence of each other together.

You are excused until tomorrow at 1:00 o'clock.

Congratulations to your son and I hope he will be a great big lawyer someday and to you also, Mrs. Kaplan.

(The jury left the courtroom.)

THE COURT: Would you get yours lined up and the defense can get theirs lined up so that tomorrow when we get started we can get right into it unless you want to do it now.

MR. ACCETTA: We will have it tomorrow, your Honor.

THE COURT: You might get in touch with counsel, they are all here earlier and you might get in touch with them a little before 1:00 o'clock and cross-check with them whether they are going to have requests for reading and then we can go right into it.

All right, tomorrow morning at 1:00 o'clock. You are excused. I will see you tomorrow at 10:00 o'clock.

* * *

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
JUL 5 1974
TIME A.M.
P.M.

UNITED STATES OF AMERICA,

-against-

HARRY BERNSTEIN, ROSE BERNSTEIN, EASTERN SERVICE CORPORATION, HERBERT CRONIN, FLORENCE BEHAR, DUN & BRADSTREET, ARTHUR PRESCOTT and MELVIN CARDONA,

Defendants.

72-CR-587

United States Courthouse
Brooklyn, New York

June 25, 1974

B e f o r e:

HONORABLE ANTHONY J. TRAVIA, U.S.D.J.

and a Jury

DANIEL D. SIMON
CHIEF OFFICIAL COURT REPORTER

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Appearances:

DAVID G. TRAGER, ESQ.,
United States Attorney
for the Eastern District of New York

BY: ANTHONY ACCETTA, ESQ.,
RONALD DePETRIS, ESQ.,
-and-
GEORGE BASHIAN, ESQ.,
Assistant United States Attorneys

ABRAHAM BRODSKY, ESQ.,
Attorney for Harry Bernstein

JOSEPH P. SOVIERO, JR., ESQ.,
Attorney for Rose Bernstein
-and-
LOUIS BERNSTEIN, ESQ.

ANDREW T. McEVOY, ESQ.,
Attorney for Eastern Service Corporation

BODELL, GROSS & McGOVERN, ESQS.,
Attorneys for Herbert Cronin

BY: LOUIS MARTINE, ESQ.,
Of Counsel

RICHARD I. ROSENKRANZ, ESQ.,
Attorney for Florence Behar

(continued next page)

Appearances: (Cont.)

WHITE & CASE, ESQ.,
Attorneys for Dun & Bradstreet

BY: OTTO G. OBERMAIER, ESQ.,
-and-
JOHN McAVOY, ESQ.,
Of Counsel

PATRICK WALL, ESQ.,
Attorney for Arthur Prescott

IRVING J. KLEIN, ESQ.,
Attorney for Melvin Cardona

BY: MICHAEL R. KLEIN, ESQ.,
Of Counsel

THE COURT: When we left off yesterday we indicated to the jury that we would respond to their request which was marked Court Exhibit 44, wherein the jurors requested the testimony on Count 37 with reference to 570-55th Street and the testimony on Count 62 with reference to the property at 741 Sheffield Avenue.

Having so much time to look over these things myself, I went over my notes and also the transcript insofar as my notes indicated and, of course, that will be subject to anything you may say, but as to Count 37 which is 570 55th Street, I find only testimony given by Mrs. Kapraki. This is testimony of November 27, 1973, starting on the last question on that page, on the bottom of page 5284 going over to the next page, 5285 to line 10.

Then there is a great deal of colloquy and we go to 5279 -- no, 5299, line 7 over to 5308 and I find, though I may be incorrect, but I find no cross examination with regard to that property.

MR. BRODSKY: That goes to 5308 line 8.

THE COURT: Yes, 5308, line 8. Didn't I mention that, Mr. Brodsky? If I did, I am sorry. It is line 8.

As to Count 62 with reference to 741 Sheffield

Avenue, there too I find only testimoney by Mr. Goodwin on the testimony taken of February 25, 1974, starting at page 12802 going to 12818 line 11, and there again I find no cross-examination with regard to that particular property.

Am I correct?

MR. ACCETTA: Those pages are the pages we have been able to find. We have been unable to find any cross.

MR. BRODSKY: There is no cross examination but may we have the request read, Judge?

THE COURT: Surely.

The request reads: "The jury requests the testimony on Count 37; 570 55th Street."

Then it says: "The testimony of Count 62; 741 Sheffield Avenue."

MR. BRODSKY: With regard to the testimony of Kapraki we respectfully offer the testimony -- they ask for the testimony, they do not ask for direct and cross, they ask for testimony and we did that with Frank Fay if your Honor will recall --

THE COURT: Which I said I would take cross-examination with respect to those two but I am going to limit it. I think if I read that request correctly it requires just the testimony on that count, those

counts, and you will recall yesterday when I inquired of the jury I said to them, and I believe I was taking a flyer because I did not exactly remember, but I did say I believe with respect to Count 37 that there was only the testimony of Mrs. Kapraki and with respect to Count 62 I said there was only the testimony of Mr. Goodwin and they seemed to indicate that is what they wanted.

MR. BRODSKY: I do not know if that is what they seemed to indicate, Judge.

But, if your Honor will recall with respect to testimony heretofore, we introduced testimony with respect to Frank Fey, if your Honor will recall.

THE COURT: At that time we were talking, of course, about different counts where the question of knowledge was involved and these are not them because from what I gather from these two counts, I think they are both bribery counts and they zero in strictly on those two properties.

MR. BRODSKY: If your Honor will recall the Kapraki testimony, Mrs. Kapraki said she spoke with Rose Bernstein or Shorenstein, also known as Shorenstein, at the desk of Mickey Terry and we have Rita Azzarello's testimony, that at no time did she hear her speak with her either at the desk of

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Mickey Terry or any other place.

THE COURT: Mrs. Azzarello, I think so.

MR. BRODSKY: Rita Azzarello so testified.

THE COURT: Mrs. Azzarello, of course, she says she never saw.

MR. BRODSKY: That is correct.

THE COURT: That does not mean to say it never happened. In other words she was not looking at that desk 24 hours a day.

MR. BRODSKY: Her desk had a complete view of the entire office and her desk from where she was at, at her desk she could see Mr. Terry's desk and I submit that that testimony should be read to the jury.

MR. ACCETTA: If Mr. Brodsky wants to travel afield in such a manner, then I suggest we also read the testimony of Rose Cohen and Frank Fey as to the manner in which the cases were delivered and the manner in which assignments were made.

MR. BRODSKY: This has only to do with this period she says she spoke to her at Mickey Terry's desk, that is all, and we want the testimony of Rita Azzarello that she saw -- she had a clear view of Terry's desk and at no time did she ever speak with Mrs. -- did she ever see Mrs. Shorenstein speak with --

THE COURT: Here comes your co-counsel, Mr. Brodsky -- with Mrs. Kapraki so that I do not want to be as nonsensical as my friend here.

MR. SOVIERO: I do not think it is nonsensical, I am sorry, Mr. Brodsky. If it will satisfy Mr. Accetta I would be happy to have the testimony of Rose Cohen read on direct and cross-examination so long as we get the testimony of Rita Azzarello in.

MR. MARTINE: I might have objection to that.

THE COURT: You have objection to it?

MR. MARTINE: Rose Cohen talking about delivering a file on these counts.

THE COURT: You are talking to what Mr. Soviero is saying.

MR. MARTINE: Yes, I would object.

MR. SOVIERO: As to Mr. Accetta's suggestion, I am indicating, if it please the Court, I am willing to go along on these two counts.

THE COURT: He said if Mr. Brodsky wants to go that far afield he would then suggest that we go into this other testimony.

MR. SOVIERO: I am suggesting that it is perfectly all right.

MR. BRODSKY: Judge, Mrs. Azzarello's testimony as far as that is concerned, is only one page, no more.

(continued next page.)

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THE COURT: The Court rules they are to be read those pages and lines suggested by the Court because I feel that is what they want. Of course, I will tell the jury that anytime they want the testimony reading stopped they may and if after I get through reading whatever has to be read through the reporter, of course, I will then again advise them if they want more to ask for it.

MR. BRODSKY: I respectfully except to your Honor's ruling.

MR. SOVIERO: I join in that exception.

THE COURT: Your exceptions are noted.

MR. MC EVOY: Would you recall my exception as well.

THE COURT: All right Mr. McEvoy.

MR. MC EVOY: One further point your Honor. Your Honor made reference to the property at 570 55th Street, the transcript Pages 5284 Line 25 through Page 5285 Line 10. That material is duplicated in the subsequent sections from 5299 and I see no purpose in reading it twice.

THE COURT: Is that all right?

MR. ACCETTA: It makes no difference.

THE COURT: I agree with you, it is repetitive but I only pointed those out. In my reading of the

transcript as I was going through that part that is the first thing I hit and I marked it off and then when I went on I agree it is repetitive so we will start with 5299 Line 7. I will put, as I usually do for the reporter's information, a red line at Line 7 on Page 5299 and we will go to 5308 and I believe I said Line 8, is that right?

MR. ACCETTA: Yes.

THE COURT: I will put on the red line at Line 8 so we will read those questions and answers between those two red lines within those pages 5299 to 5308 and I ask the reporter, of course, just to read the questions and answers and not the colloquy if there is any, I do not recall, and things that go on between the lawyers and the judge.

With respect to Count 62, we start at 12803 Line 6.

MR. MC EVOY: 802 your Honor.

THE COURT: I am sorry it is 802, Line 6, 12802 Line 6 and I will put a red line where the questioning starts and it goes to 12818 Line 8, no, Line 11. Is that right?

MR. ACCETTA: Yes sir.

THE COURT: I will put a red line there and I will ask the reporter to read that testimony between

12802 and 12818 between the two red lines, again reminding the reporter that colloquy and other portions which are between the lawyer and the Court is to be omitted.

We will start, therefore, with Count 37. Will you bring the jury in.

(The jury took its place in the jury box.)

THE COURT: How did the graduations go?

Ladies and gentlemen of the jury when we left off yesterday because of the lateness of the hour I indicated to you that I would leave the reading of the testimony you requested until today and your request, reading it again, is the testimony on Count 37; 570 55th Street and the testimony on Count 62; 741 Sheffield Avenue, so I will have the first testimony concerning Count 37 read to you. It is the testimony by Mrs. Kapraki on direct examination starting on Page 5299 Line 7 and going through Page 5308 Line 8. I will ask the reporter to read that.

(The transcript was read at the pages indicated.)

THE COURT: After we have read this testimony as to both counts after you go back, if there is more you want just let us know. If there is any-

thing else you want let us know.

I will ask the reporter to read the testimony of Mr. Goodwin concerning Count 62, 741 Sheffield Avenue, which is part of the transcript of February 25th, 1974, starting at Page 12802 Line 6 where I have put a red mark, going to Page 12818 Line 11, where I have put a red line and I will ask the reporter to read between those two red lines on those respective pages.

(The transcript was read on pages as indicated.)

THE COURT: All right ladies and gentlemen of the jury, you may continue your deliberations.

(The jury left the courtroom.)

THE COURT: We will stand in recess until next we are called.

(Continued on next page)

(A recess was taken until 3 p.m..)

THE COURT: I have another request from the jury which the Court will mark Court exhibit number 45.

THE CLERK: So marked.

THE COURT: And it reads as follows:

The jury requests one,"the stipulation showing the merger of JET Warehouse with" -- and it looks like -- "various other companies."

MR. SOVIERO: Didn't we give it to them the other day.

THE COURT: No, this is something else. Is there such a written stipulation.

MR. ACCETTA: Yes, your Honor.

THE COURT: And two, "The listing of 26???" -- I guess they don't know the exact number -- "The listing of 26? properties that went into foreclosure and were sold by Eastern Service or JET Warehouse (chart by Mr. Fred)."

Is that one, Mr. McEvoy --

MR. MC EVOY: KO in evidence.

THE COURT: Can I get those two in a hurry and send them in.

MR. SOVIERO: It is not my understanding all the properties are listed there are under

foreclosure, is that right.

THE COURT: No, it just says the listing 26? properties that went into foreclosure and were sold by Eastern Service or JET WArehouse (chart by Mr. Fred).

MR. SOVIERO: I think it should be explained to the jury.

THE COURT: Why don't you let Mr. McEvoy address himself to that.

MR. SOVIERO: I should, I am a little nervous right now as everybody else is.

MR. MC EVOY: I have the exhibit, your Honor, there is no problem.

THE COURT: That is what I am goingto send them. They are asking for the chart by Mr. Fred. If they don't like it they can send it back. Would you have the other one Mr. Accetta.

MR. ACCETTA: Yes, your Honor, I believe we do.

THE COURT: Show this to Mr. DePetris. Mr. DePetris, do you want to see this? What is this, KO in evidence.

MR. MC EVOY: KO in evidence, your Honor.

THE COURT: Show this to Mr. McEvoy, Court exhibit 45. I think I saw someplace on your

stipulation something like 30 and that is 26?.

MR. MC EVOY: It may or may not be legitimate to be concerned in respect of item number 2 in that KO as given to the jury was, I thought, clearly explained, about 30 properties, 26 of which were sold, 4 of which were in foreclosure. The jury indicates a listing of 26 question mark properties and the word is lined out that went into foreclosure.

In that light I would respectfully submit to the Court it may be entirely appropriate at least to identify for the jury that of the 30 Kapraki properties, 4 are in foreclosure, 26 were sold.

Now the Court can do it either by appending a note to KO in evidence or bring them out and tell them.

THE COURT: That is exactly what that says.

MR. MC EVOY: Yes.

THE COURT: They have the two figures confused. I guess the 26 they are talking about, they thought the 26 were foreclosed.

MR. ACCETTA: Your Honor, this chart and Mr. McEvoy can correct me, purports these 4 foreclosures that were done while these mortgages were in the hands of Eastern. It would not be accurate

to state for instance that out of the other 22 properties there were no foreclosures because in fact of the properties on the chart others did have foreclosures.

MR. BRODSKY: There is no testimony to that, Judge.

MR. ACCETTA: It is not in the record one way or the other and I think it would be inaccurate to say there are no foreclosures where there are foreclosures.

THE COURT: No, I think that chart, KO in evidence, does indicate --

MR. ACCETTA: It speaks for itself, your Honor.

THE COURT: That there were 30 properties involved.

MR. MC EVOY: Yes.

THE COURT: 4 of which have been foreclosed.

MR. BRODSKY: Period.

THE COURT: I can tell them that and if they want to see the chart they can see the chart too.

MR. ACCETTA: Perhaps the chart ought to speak for itself because it speaks specifically of direct foreclosures and there is a separate portion

of the chart having to do with direct foreclosure costs and there is no mention of foreclosures in any other part of the chart, rather than making explanations which are going to be ambiguous.

THE COURT: It is a little bit involved but I do not think there would be any problem in explaining that. Right in the first part of the stipulation -- I do not recall the exact language, could you point to it Mr. McEvoy, please.

MR. MC EVOY: If I can get it back from Mr. Accetta I will be happy to, your Honor.

The stipulation in its text talks about the 30 mortgages given by Eastern Service to Kapraki received in evidence and subsequently sold to permanent investors and indicates the layout of the chart itself. It is my recollection that this chart was generated as a result of the subpoena issued by the government which called for the information in precisely this form and it seems to me now to be beyond the sporting theory of justice to start arguing about that which is within or without the record. It is evident from what the jury's note indicates they do not understand the record itself and I think that much has to be clarified.

THE COURT: Then I would give them that

stipulation. If they have other questions, let them ask. It is a stipulation in evidence and apparently that is what they are looking for. Maybe when they see it and read it they will answer their own question mark.

MR. SOVIERO: Your Honor, I do not think it should be left to maybe.

THE COURT: I am not going to leave it to maybe, I am leaving it to them and I hope they are not maybe'ing like you are now.

MR. SOVIERO: I suggest respectfully to you it should be explained to the jury.

THE COURT: They are getting exactly what they want and they parenthesize it at the very end, parentheses chart by Mr. Fred parentheses. This is the chart they are referring to. So let them have it and if they require any explanation after that we will explain it.

(Continued on next page.)

MR. ACCETTA: With respect to the first request Government Exhibit 232 in evidence, that is a copy of a certificate of merger involving various real estate corporations and Jet Warehouse Corporation.

THE COURT: That is what they are asking for.

MR. ACCETTA: This is not in the form of stipulation, this is in the form of a document which was admitted. If I recall I believe there was a brief oral stipulation to the effect that if the witness from the Department of State were to appear he would testify that this is an official record and therefore on that basis the statements in this document were read to the Jury. This is the document that was read from.

THE COURT: Well, the only way you can do what you say is to bring them in and tell them there was an oral stipulation to that effect and I do not know whether it is necessary when we have something in evidence here.

MR. ACCETTA: This was in evidence, this is exactly what was read.

THE COURT: Do you have any objection to that going in that way?

MR. MC EVOY: This document your Honor has in hand is no problem.

THE COURT: 232 is it?

MR. ACCETTA: Yes sir.

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THE COURT: 232 in evidence. I am going to send in PO in evidence and 232 in evidence and see what the Jury does with it.

MR. MC EVOY: Taking a page from Mr. DePetris' booklet, let me ask one more time to consider in light of the note some explanatory remark, your Honor. The tail end of the note indicates that the Jury has placed a construction on the meaning of PO in evidence by referencing it as Mr. Fred's chart. The beginning of item number two indicates that they both believe that reflects 26 foreclosures.

THE COURT: Well it says a listing of 26 properties.

MR. MC EVOY: Which went into foreclosure.

THE COURT: The word there apparently was became and they took out the word became and said went into foreclosure.

MR. BRODSKY: Would your Honor please read the balance of that request?

THE COURT: What have you got here on the chart?

MR. MC EVOY: There are thirty in total, your Honor, twenty-six as I recall were direct sales. But it is the balance of the note that we are concerned about.

MR. BRODSKY: Yes, the balance of the note.

MR. MC EVOY: The balance of the note indicates that they construe that chart, Mr. Fred's chart, which they can clearly identify as such.

THE COURT: I think that is a fair conclusion, yes.

MR. MC EVOY: Reflecting twenty-six foreclosures. That is clearly a misinterpretation of the testimony and what I am saying to the Court is that given the state of the record as it is presently constituted, I would urge upon the Court, the Court has a positive obligation to at least clarify for the Jury the fact that the twenty-six properties to which they made reference did not go into foreclosure as per that chart.

MR. ACCETTA: If your Honor is disposed to do something of that order --

THE COURT: I am disposed to clarify that.

MR. ACCETTA: I do think that some compensating statement ought to be made to the effect not all of those went into foreclosure, the fact some did go into foreclosure. It would be just as misleading to say all twenty-six did not go into foreclosure.

MR. DE PETRIS: If I may suggest a way of perhaps getting around this morass, would be to tell them the chart has nothing to do with foreclosures, it has

to do with costs. Some of the poor properties, the costs relate to foreclosure. The other twenty-six relate to gross profit or loss.

MR. MC EVOY: I think the simplest statement to avoid confusion and a lot of difficulty because argumentative and advocate positions are being advanced, is to simply say to the Jury, ladies and gentlemen this chart in evidence does not show twenty-six foreclosures period.

MR. BRODSKY: Exactly.

MR. MC EVOY: Just simply does not show twenty-six foreclosures.

MR. BRODSKY: This is really a misapprehension on their part.

THE COURT: What does it show?

MR. ACCETTA: They can read it for themselves.

THE COURT: Read the chart and read the stipulation.

MR. MC EVOY: The very clear headings on the chart do not indicate twenty-six foreclosures and they can read the stipulation. I think your Honor can attach to MO in evidence a note.

THE COURT: That is what I want to do rather than bring the Jury in.

MR. MC EVOY: The briefer the better I suspect.

THE COURT: I will say, "Please note that KO in evidence which is attached does not --

MR. MC EVOY: Show --

MR. ACCETTA: Could you say is not concerned --

THE COURT: I would rather say does not show. Does not show twenty-six foreclosures. Please read --

MR. MC EVOY: I suggest you read the text of the stipulation and try carefully to determine precisely what it does show.

THE COURT: It is suggested that you read KO in evidence in its entirety.

MR. ACCETTA: Could we add the word to that note "purport" to show, does not purport to show twenty-six foreclosures.

MR. BRODSKY: What do you mean purport, it does not show.

THE COURT: It does not show it, it just does not show it.

Mark this note I am sending in Court Exhibit 45A and indicate on the record it is going into the Jury with KO in evidence in accordance with their request contained in Court Exhibit 45.

Do you want to take a peek at this and make sure I have nothing else on this note?

MR. MC EVOY: No sir, satisfied as read to

counsel.

MR. BRODSKY: It is marked as the Court Exhibit.

THE COURT: I did not get a exhibit stamp yet Mr. Jiusti.

I have two things on there I did not state: "Dear Members of the Jury" and at the bottom I put "Judge Travia".

Marshal it will be given to the foreman of the Jury.

We can now stay in recess.

(A recess was taken until 3:40 o'clock p.m.)

THE COURT: Are all the attorneys present?

MR. MC EVOY: I can cover for Mr. Soviero and somebody else can cover for Mr. Martine.

THE COURT: I will wait.

I see now Mr. Martine and Mr. Soviero are here now.

I have just received a note which the Court will mark Court Exhibit No. 46 which reads as follows: "The Jury has reached a verdict on all counts for the defendants Florence Behar, Melvin Cardona, Harry Bernstein, Rose Bernstein, Eastern Service Inc.", which means that by the process of deduction there are still three defendants, Dun and Bradstreet, Prescott and Cronin.

Mr. Leary, would you tell the Jury to come in please.

I am going to read them in the order that they indicate. We will take one defendant at a time.

(The Jury took its place in the Jurybox.)

THE COURT: Ladies and gentlemen of the Jury: I have your last note which the Court has marked Court Exhibit 46 in which you indicate that you have reached a verdict on all counts for the defendants Florence Behar, Melvin Cardona, Harry Bernstein, Rose Bernstein, and Eastern Service Corporation.

We will take them in the order in which you have indicated on your note.

We will take Florence Behar first. Mr. Loschert will you please stand and Mrs. Behar will you please stand and face the Jury.

COURT CLERK: Mr. Loschert and ladies and gentlemen of the Jury, have you agreed upon a verdict?

FOREMAN OF THE JURY: Yes, we have.

COURT CLERK: How do you find the defendant Florence Behar on count one?

FOREMAN OF THE JURY: Guilty on count one.

THE COURT: Guilty on count one did you say?

JURY FOREMAN: Yes.

COURT CLERK: How do you find the defendant

Florence Behar on court two?

JURY FOREMAN: Guilty.

THE COURT: Count four.

COURT CLERK: How do you find the defendant Florence Behar on count four?

JURY FOREMAN: Guilty.

THE COURT: Count five.

COURT CLERK: How do you find the defendant Florence Behar on count five?

JURY FOREMAN: Guilty.

THE COURT: Count seven.

COURT CLERK: How do you find the defendant Florence Behar on count seven?

JURY FOREMAN: Guilty.

THE COURT: Count nine.

COURT CLERK: How do you find the defendant Florence Behar on count nine?

JURY FOREMAN: Guilty.

THE COURT: Count ten.

COURT CLERK: How do you find the defendant Florence Behar on count ten?

JURY FOREMAN: Guilty.

THE COURT: Count twelve.

COURT CLERK: How do you find the defendant Florence Behar on count twelve?

JURY FOREMAN: Guilty.

THE COURT: Count fourteen.

COURT CLERK: How do you find the defendant Florence Behar on count fourteen?

JURY FOREMAN: Guilty.

THE COURT: Count sixteen.

COURT CLERK: How do you find the defendant Florence Behar on count sixteen?

JURY FOREMAN: Guilty.

THE COURT: Count seventeen.

COURT CLERK: How do you find the defendant Florence Behar on count seventeen.

JURY FOREMAN: Guilty.

THE COURT: Count eighteen.

COURT CLERK: How do you find the defendant Florence Behar on count eighteen?

JURY FOREMAN: Guilty.

THE COURT: Count twenty.

COURT CLERK: How do you find the defendant Florence Behar on count twenty?

JURY FOREMAN: Guilty.

THE COURT: Count twenty-one.

COURT CLERK: How do you find the defendant Florence Behar on count twenty-one?

JURY FOREMAN: Guilty.

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THE COURT: Count 23.

COURT CLERK: How do you find the defendant Florence Behar on Count 23?

JURY FOREMAN: Guilty.

THE COURT: Count 25.

COURT CLERK: How do you find the defendant Florence Behar on Count 25?

JURY FOREMAN: Guilty.

THE COURT: Count 27.

COURT CLERK: How do you find the defendant Florence Behar on Count 27?

JURY FOREMAN: Guilty.

THE COURT: Count 29.

COURT CLERK: How do you find the defendant Florence Behar on Count 29?

JURY FOREMAN: Guilty.

THE COURT: Count 31.

COURT CLERK: How do you find the defendant Florence Behar on Count 31?

JURY FOREMAN: Guilty.

THE COURT: Count 33.

COURT CLERK: How do you find the defendant Florence Behar on Count 33?

JURY FOREMAN: Not guilty.

COURT CLERK: How do you find Florence Behar

on the lesser included offense on Count 33?

JURY FOREMAN: Not guilty.

THE COURT: Count 35.

COURT CLERK: How do you find the defendant Florence Behar on Count 35?

JURY FOREMAN: Guilty.

THE COURT: 37.

COURT CLERK: How do you find the defendant Florence Behar on Count 37?

JURY FOREMAN: Guilty.

THE COURT: Count 38.

COURT CLERK: How do you find the defendant Florence Behar on Count 38?

JURY FOREMAN: Guilty.

THE COURT: There are no more counts, that is all, guilty as to all except 33 which was not guilty.

And so say you all?

MEMBERS OF THE JURY: Yes.

COURT CLERK: Mr. Loschert, ladies and gentlemen of the Jury, you say you find Florence Behar guilty on Count 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 37 and 38.

JURY FOREMAN: Guilty.

COURT CLERK: And so say you all?

JURY FOREMAN: Yes.

THE COURT: And you say you find Florence Behar not guilty on Count 33?

JURY FOREMAN: That is right.

COURT CLERK: And so say you all?

MEMBERS OF THE JURY: Yes.

MR. ROSENKRANZ: May we have the Jury polled your Honor?

THE COURT: You ask that the Jury be polled, Mr. Rosenkranz?

MR. ROSENKRANZ: Yes sir.

THE COURT: Mr. Jiusti would you poll the Jury.

COURT CLERK: Mr. Loschert you say you find Florence Behar guilty on Counts 1, Count 2, Count 4, Count 5, Count 7, Count 9, Count 10, Count 12, Count 14, Count 16, Count 17, Count 18, Count 20, Count 21, Count 23, Count 25, Count 27, Count 28, Count 31, Count 35, Count 37 and Count 38 and not guilty on Count 33?

JUROR LOSCHERT: Yes, that is right sir.

THE COURT: Was that your verdict?

JUROR LOSCHERT: Yes sir.

THE COURT: Do you want to pass that down so that you can follow the numbers as all the numbers are going to be hard to remember. All of you have seen that chart I assume. Pass it down as you go along.

Now go ahead Mr. Jiusti.

COURT CLERK: Mr. Gapinski, you say you find Mrs. Florence Behar guilty on Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 37 and 38 and not guilty on Count 33, is that your verdict?

JUROR GAPINSKI: That is correct.

COURT CLERK: Mr. Beck you say you find Florence Behar guilty on Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 37 and 38 and not guilty on Count 33, is that your verdict?

JUROR BECK: Yes it is.

THE COURT: May I ask the three of you, Mr. Loschert, Mr. Gapinski and Mr. Beck, are each of those your verdict?

JUROR LOSCHERT, GAPINSKI AND BECK: Yes.

COURT CLERK: Mr. Fabiszak do you say you find Mrs. Florence Behar guilty on Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 37 and 38 and not guilty on Count 33, is that your verdict?

JUROR FABISZAK: Yes, that is my verdict.

THE COURT: As to each of them?

JUROR FABISZAK: Yes.

COURT CLERK: Mr. Rove you say you find Florence

Behar guilty on Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 37, 38 and not guilty on Count 33, is that your verdict as to each of them?

JUROR ROYE: That is my verdict.

THE COURT: On each of those counts Mr. Roye?

JUROR ROYE: Yes.

THE COURT: Mrs. Kaplan, you say you find Mrs. Florence Behar guilty on Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 37 and 38 and not guilty on Count 33, is that your verdict on each of the Counts?

JUROR KAPLAN: Yes on each of the Counts.

COURT CLERK: Mr. Caputo you say you find Mrs. Behar guilty on Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 37 and 38 and not guilty on Count 33, is that your verdict on each of the Counts?

JUROR CAPUTO: Yes, it is.

COURT CLERK: Mr. Miller you say you find Mrs. Florence Behar guilty on Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 37 and 38 and not guilty on Count 33, is that your verdict on each and every Count?

JUROR MILLER: Yes it is.

COURT CLERK: Miss Sciacca you say you find Mrs. Florence Behar guilty on Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 37 and 38 and not guilty on Count 33, is that your verdict on each and every Count?

JUROR SCIACCA: Yes.

COURT CLERK: Mr. Fluhr, you say you find Mrs. Florence Behar guilty on Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 37 and 38 and not guilty on Count 33, is that your verdict on each and every Count?

JUROR FLUHR: Yes it is.

COURT CLERK: Mr. Vassallo you say you find Mrs. Florence Behar guilty on Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 37 and 38 and not guilty on Count 33, is that your verdict on each and every Count?

JUROR VASSALLO: Yes it is.

COURT CLERK: Miss Coleman you say you find Mrs. Florence Behar guilty on Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 37 and 38 and not guilty on Count 33, is that your verdict on each and every Count?

JUROR COLEMAN: Yes it is.

COURT CLERK: The Jury has been polled, your Honor.

THE COURT: We will not proceed to the Defendant Melvin Cardona who is next on your list in Exhibit 46.

Mr. Cardona will you please stand and face the Jury.

THE COURT: Count 1.

COURT CLERK: Mr. Loschert and ladies and gentlemen of the Jury, how do you find the Defendant Melvin Cardona on Count 1?

JURY FOREMAN: Guilty.

THE COURT: Count 2.

COURT CLERK: How do you find the Defendant Melvin Cardona on Count 2?

JURY FOREMAN: Guilty.

THE COURT: Count 4.

COURT CLERK: How do you find the Defendant Melvin Cardona on Count 4?

JURY FOREMAN: Guilty.

THE COURT: Count 5.

COURT CLERK: How do you find the Defendant Melvin Cardona on Count 5?

JURY FOREMAN: Guilty.

THE COURT: Count 7.

COURT CLERK: How do you find the Defendant Melvin Cardona on Count 7?

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JURY FOREMAN: Guilty.

THE COURT: Count 10.

COURT CLERK: How do you find the Defendant Melvin Cardona on Count 10?

JURY FOREMAN: Guilty.

THE COURT: Count 12.

COURT CLERK: How do you find the Defendant Melvin Cardona on Count 12?

JURY FOREMAN: Guilty.

THE COURT: Count 14.

COURT CLERK: How do you find the Defendant Melvin Cardona on Count 14?

JURY FOREMAN: Guilty.

THE COURT: Count 16.

COURT CLERK: How do you find the Defendant Melvin Cardona on Count 16?

JURY FOREMAN: Guilty.

THE COURT: 17.

COURT CLERK: How do you find the Defendant Melvin Cardona on Count 17?

JURY FOREMAN: Guilty.

THE COURT: Count 18.

COURT CLERK: How do you find the Defendant Melvin Cardona on Count 18?

JURY FOREMAN: Guilty.

THE COURT: 20.

COURT CLERK: How do you find the Defendant Melvin Cardona on Count 20?

JURY FOREMAN: Guilty.

THE COURT: 21.

COURT CLERK: How do you find the Defendant Melvin Cardona on Count 21?

JURY FOREMAN: Guilty.

THE COURT: Count 23.

COURT CLERK: How do you find the Defendant Melvin Cardona on Count 23?

JURY FOREMAN: Guilty.

THE COURT: Count 25.

COURT CLERK: How do you find the Defendant Melvin Cardona on Count 25?

JURY FOREMAN: Guilty.

THE COURT: Count 27.

COURT CLERK: How do you find the Defendant Melvin Cardona on Count 27?

JURY FOREMAN: Guilty.

THE COURT: Count 28.

COURT CLERK: How do you find the Defendant Melvin Cardona on Count 28?

JURY FOREMAN: Guilty.

THE COURT: Count 31.

COURT CLERK: How do you find the Defendant Melvin Cardona on Count 31?

JURY FOREMAN: Guilty.

THE COURT: So say you all?

JURY FOREMAN: Yes.

MR. KLEIN: May we have the Jury polled please?

THE COURT: All right. You may sit down Mr. Loschert.

May the record indicate when I asked "So say you all", is there anyone that did not nod his head, anyone whom I overlooked? Okay.

The Jury, at the request of Mr. Klein, will be polled as to the Defendant Melvin Cardona.

COURT CLERK: Mr. Loschert you say you find the Defendant Melvin Cardona guilty on Counts 1, 2, 4, 5, 7, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28 and 31, is that your verdict on each and every Count?

JUROR LOSCHERT: Yes.

COURT CLERK: Mr. Gapinski you say you find the Defendant Melvin Cardona guilty on Counts 1, 2, 4, 5, 7, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28 and 31, you say your verdict is guilty on each and every Count?

JUROR GAPINSKI: Yes sir.

COURT CLERK: Mr. Peck, you say you find the

Defendant Melvin Cardona guilty on Counts 1, 2, 4, 5, 7, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28 and 31, is that your verdict on each and every Count?

JUROR BECK: Yes it is.

COURT CLERK: Mr. Fabiszak you say you find the Defendant Melvin Cardona guilty on Counts 1, 2, 4, 5, 7, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28 and 31, is that your verdict on each and every Count?

JUROR FABISZAK: Yes that is right, that is.

COURT CLERK: Mr. Roye, you say you find the Defendant Melvin Cardona guilty on Counts 1, 2, 4, 5, 7, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28 and 31, is that your verdict on each and every Count?

JUROR ROYE: Yes it is, sir.

COURT CLERK: Mrs. Kaplan you say you find the Defendant Melvin Cardona guilty on Counts 1, 2, 4, 5, 7, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28 and 31, is that your verdict on each and every Count?

JUROR KAPLAN: Yes it is.

COURT CLERK: Mr. Caputo, you say you find the Defendant Melvin Cardona guilty on Counts 1, 2, 4, 5, 7, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28 and 31, is that your verdict on each and every Count?

JUROR CAPUTO: Yes, it is.

COURT CLERK: Mr. Miller, you say you find the

Defendant Melvin Cardona guilty on Counts 1, 2, 4, 5, 7, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28 and 31, is that your verdict on each and every Count?

JUROR MILLER: Yes it is.

COURT CLERK: Miss Sciacca, you say you find the Defendant Melvin Cardona guilty on Counts 1, 2, 4, 5, 7, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28 and 31, is that your verdict on each and every Count?

JUROR SCIACCA: Yes.

COURT CLERK: Mr. Fluhr, you say you find the Defendant Melvin Cardona guilty on Counts 1, 2, 4, 5, 7, 10, 12, 14, 16, 17, 18, 20, 21,23, 25, 27, 28 and 31, is that your verdict on each and every Count?

JUROR FLUHR: Yes it is sir.

COURT CLERK: Mr. Vassallo you say you find the Defendant Melvin Cardona on Counts 1, 2, 4, 5, 7, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28 and 31, is that your verdict on each and every Count?

JUROR VASSALLO: Yes it is.

COURT CLERK: Miss Coleman, you say you find the Defendant Melvin Cardona guilty on Counts 1, 2, 4, 5, 7, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28 and 31, is that your verdict on each and every Count?

JUROR COLEMAN: Yes it is.

COURT CLERK: The Jury is polled your Honor.

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THE COURT: We will now proceed to the defendant you named next, Mr. Harry Bernstein. You need not stand if you do not want if you would rather sit, but face the Jury.

Mr. Loschert will you please rise and start with Count 1, Tony.

COURT CLERK: Mr. Loschert you say you and the ladies and gentlemen of the Jury have reached a verdict on Harry Bernstein?

JURY FOREMAN: Yes sir.

THE COURT: How do you find the Defendant Harry Bernstein on Count 1?

JURY FOREMAN: Guilty.

THE COURT: Count 25.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 25?

JURY FOREMAN: Guilty.

THE COURT: Count 29.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 29?

JURY FOREMAN: Not guilty.

COURT CLERK: How do you find the Defendant Harry Bernstein on the lesser included offense on Count 29?

JURY FOREMAN: Not guilty.

THE COURT: Count 33.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 33?

JURY FOREMAN: Not guilty.

THE COURT: Count 35.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 35?

JURY FOREMAN: Guilty.

THE COURT: Count 38.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 38?

JURY FOREMAN: Guilty.

THE COURT: 39.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 39?

JURY FOREMAN: Guilty.

THE COURT: 41.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 41?

JURY FOREMAN: Guilty.

THE COURT: Count 42.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 42.

JURY FOREMAN: Guilty.

THE COURT: Count 44.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 44?

JURY FOREMAN: Guilty.

THE COURT: 46.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 46?

JURY FOREMAN: Guilty.

THE COURT: Count 48.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 48?

JURY FOREMAN: Guilty.

THE COURT: Count 50.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 50?

JURY FOREMAN: Guilty.

THE COURT: Count 51.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 51?

JURY FOREMAN: Guilty.

THE COURT: Count 53.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 53?

JURY FOREMAN: Guilty.

THE COURT: Count 55.

COURT CLERK: How do you find the Defendant

Harry Bernstein on Count 55?

JURY FOREMAN: Guilty.

THE COURT: Count 57.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 57?

JURY FOREMAN: Guilty.

THE COURT: Count 59.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 59?

JURY FOREMAN: Guilty.

THE COURT: Count 61.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 61?

JURY FOREMAN: Not guilty.

COURT CLERK: How do you find the Defendant Harry Bernstein on the lesser included offense in Count 61?

JURY FOREMAN: Not guilty.

THE COURT: Count 63.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 63?

JURY FOREMAN: Guilty.

THE COURT: Count 65.

COURT CLERK: How do you find the Defendant Harry Bernstein on Count 65?

JURY FOREMAN: Guilty.

THE COURT: And so say you all?

(Members of the Jury indicated by saying yes.)

THE COURT: Mr. Brodsky I assure you will want the Jury polled?

MR. BRODSKY: Yes your Honor.

THE COURT: On the motion of Mr. Brodsky the Jury will be polled. We will start with Mr. Loschert.

COURT CLERK: Mr. Loschert you say you find the Defendant Harry Bernstein guilty on Counts 1, 25, 35, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63, and 65 and not guilty on Counts 29, 33 and 61, is that your verdict on each and every Count?

JUROR LOSCHERT: Yes sir.

COURT CLERK: Mr. Capinski you say you find the Defendant Harry Bernstein guilty on Counts 1, 25, 35, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty on Counts 29, 33 and 61, is that your verdict on each and every Count?

JUROR CAPINSKI: That is correct.

COURT CLERK: Mr. Beck you say you find Mr. Berstein guilty on Counts 1, 25, 35, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty on Counts 29, 33 and 61, is that your verdict on each and every Count?

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JUROR BECK: Yes, that is my verdict.

COURT CLERK: Mr. Fabiszak, you say you find Mr. Bernstein guilty on Counts 1, 25, 35, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty on Counts 29, 33 and 61, is that your verdict on each and every Count?

JUROR FABISZAK: Yes it is.

COURT CLERK: Mr. Boye you say you find Mr. Bernstein guilty on Counts 1, 25, 35, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty on Counts 29, 33 and 61, is that your verdict on each and every Count?

JUROR BOYE: Yes it is sir.

COURT CLERK: Mrs. Kaplan you say you find the Defendant Mr. Bernstein guilty on Counts 1, 25, 35, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55. 57, 59, 63 and 65 and not guilty on Counts 29, 33 and 61, is that your verdict on each and every Count?

JUROR KAPLAN: Yes it is.

COURT CLERK: Mr. Caputo, you say you find the Defendant Mr. Bernstein guilty on Counts 1, 25, 35, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty on Counts 29, 33 and 61, is that your verdict on each and every Count?

JUROR CAPUTO: Yes it is.

COURT CLERK: Mr. Miller, you say you find the Defendant Mr. Bernstein guilty on Counts 1, 25, 35, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty on Counts 29, 33 and 61, is that your verdict on each and every Count?

JUROR MILLER: Yes, it is.

COURT CLERK: Miss Sciacca you say you find Mr. Bernstein guilty on Counts 1, 25, 35, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty on Counts 29, 33 and 61, is that your verdict on each and every Count?

JUROR SCIACCA: Yes it is.

COURT CLERK: Mr. Fluhr, you say you find Mr. Bernstein guilty on Counts 1, 25, 35, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty on Counts 29, 33 and 61, is that your verdict on each and every Count?

JUROR FLUHR: Yes it is.

COURT CLERK: Mr. Vassallo, you say you find Mr. Bernstein guilty on Counts 1, 25, 35, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty on Counts 29, 33 and 61, is that your verdict on each and every Count?

JUROR VASSALLO: Yes it is.

COURT CLERK: Miss Coleman you say you find the

Defendant Mr. Bernstein guilty on Counts 1, 25, 35, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty on Counts 29, 33 and 61, is that your verdict on each and every Count?

JUROR COLEMAN: Yes it is.

THE COURT: So say you all?

MEMBERS OF THE JURY: Yes.

THE COURT: The Jury has been polled.

(Continued on next page.)

THE COURT: In the order that you have indicated you have arrived at a verdict we will next go to Mrs. Rose Bernstein. Mrs. Bernstein will you please rise and face the Jury.

Mr. Loschert will you please rise.

COURT CLERK: Mr. Loschert and ladies and gentlemen of the Jury have you agreed upon a verdict on Rose Bernstein?

JURY FOREMAN: Yes.

COURT CLERK: How do you find Mrs. Rose Bernstein on Count 1?

JURY FOREMAN: Guilty.

THE COURT: Count 29.

COURT CLERK: How do you find the Defendant Rose Bernstein on Count 29?

JURY FOREMAN: Not guilty.

COURT CLERK: How do you find the Defendant Rose Bernstein on the lesser included offense on Count 29?

JURY FOREMAN: Not guilty.

THE COURT: Count 33.

COURT CLERK: How do you find the Defendant Rose Bernstein on Count 33?

JURY FOREMAN: Not guilty.

COURT CLERK: How do you find the Defendant Rose Bernstein on the lesser included offense on Count 33?

JURY FOREMAN: Not guilty.

THE COURT: Count 35.

COURT CLERK: How do you find the Defendant Rose Bernstein on Count 35?

JURY FOREMAN: Guilty.

THE COURT: Count 36.

COURT CLERK: How do you find the Defendant Rose Bernstein on Count 36?

JURY FOREMAN: Guilty.

THE COURT: Count 37.

COURT CLERK: How do you find the Defendant Rose Bernstein on Count 37?

JURY FOREMAN: Guilty.

THE COURT: Count 38.

COURT CLERK: How do you find the Defendant Rose Bernstein on Count 38?

JURY FOREMAN: Guilty.

THE COURT: Count 62.

COURT CLERK: How do you find the Defendant Rose Bernstein on Count 62?

JURY FOREMAN: Not guilty.

COURT CLERK: How do you find the Defendant Rose Bernstein in the lesser included offense in Count 62?

JURY FOREMAN: Not guilty.

DEFENDANT ROSE BERNSTEIN: I want you all to know

I never have spoken to Mrs. Kapraki in my entire life and you look at yourselves in the mirror every morning--

THE COURT: Mrs. Bernstein I asked you once before and you promised me you would make no outburst.

DEFENDANT ROSE BERNSTEIN: Because this is --

THE COURT: That is enough or I will have to ask the Marshal to do something.

THE COURT: And so say you all?

JURY FOREMAN: Yes.

MR. SOVIERO: I move the Jury be polled.

THE COURT: Mr. Soviero moves the Jury be polled.

COURT CLERK: Mr. Loschert you say you find the Defendant Rose Bernstein guilty on Counts 1, 35, 36, 37, 38 and not guilty on Counts 29, 33 and 62, is that your verdict on each and every Count?

JUROR LOSCHERT: Yes sir.

COURT CLERK: Mr. Gapinski you say you find the Defendant Rose Bernstein guilty on Counts 1, 35, 36, 37, 38, and not guilty on Counts 29, 33 and 62, is that your verdict on each and every Count?

JUROR GAPINSKI: Yes that is right.

COURT CLERK: Mr. Beck you say you find the Defendant Rose Bernstein guilty on Counts 1, 35, 36, 37 and 38 and not guilty on Counts 29, 33 and 62, is that your verdict on each and every Count?

JUROR BECK: Yes it is.

COURT CLERK: Mr. Fabiszak you say you find the Defendant Rose Bernstein guilty on Counts 1, 35, 36, 37, 38, and not guilty on Counts 29, 33 and 62. is that your verdict on each and every Count?

JUROR FABISZAK: Yes that is.

COURT CLERK: Mr. Roye, you say you find the Defendant Rose Bernstein guilty in Counts 1, 35, 36, 37, and 38 and not guilty in Counts 29, 33 and 62, is that your verdict on each and every Count?

JUROR ROYE: Yes it is.

COURT CLERK: Mrs. Kaplan you say you find the Defendant Rose Bernstein guilty on Counts 1, 35, 36, 37 and 38 and not guilty on Counts 29, 33 and 62, is that your verdict on each and every Count?

JUROR KAPLAN: Yes it is.

COURT CLERK: Mr. Caputo, you say you find the Defendant Rose Bernstein guilty on Count 1, Count 35, Count 36, 37 and 38 and not guilty on Counts 29, 33 and 62, is that your verdict on each and every Count?

JUROR CAPUTO: Yes it is.

COURT CLERK: Mr. Miller you say you find the Defendant Rose Bernstein guilty on Counts 1, 35, 36, 37 and 38 and not guilty on Counts 29, 33 and 62, is that your verdict on each and every Count?

JUROR MILLER: Yes it is.

COURT CLERK: Miss Sciacca, you say you find the Defendant Rose Bernstein guilty on Counts 1, 35, 36, 37, and 38 and not guilty on Counts 29, 33 and 62, is that your verdict on each and every Count?

JUROR SCIACCA: Yes it is.

COURT CLERK: Mr. Fluhr you say you find the Defendant Rose Bernstein guilty on Counts 1, 35, 36, 37 and 38 and not guilty on Counts 29, 33 and 62, is that your verdict on each and every Count?

JUROR FLUHR: Yes it is.

COURT CLERK: Mr. Vassallo, you say you find the Defendant Rose Bernstein guilty on Counts 1, 35, 36, 37, and 38 and not guilty on Counts 29, 33 and 62, is that your verdict on each and every Count?

JUROR VASSALLO: Yes it is.

COURT CLERK: Miss Coleman, you say you find the Defendant Rose Bernstein guilty on Counts 1, 35, 36, 37, 38 and not guilty on Counts 29, 33 and 62, is that your verdict on each and every Count?

JUROR COLEMAN: Yes it is.

COURT CLERK: And so say you all?

MEMBERS OF THE JURY: Yes.

COURT CLERK: The Jury has been polled, your Honor.

THE COURT: We may now proceed to the next named defendant that appears on your note, Eastern Service Corporation, Inc. Start with Count 1.

COURT CLERK: Mr. Loschert and ladies and gentlemen of the Jury have you agreed on a verdict upon Eastern Service Corporation?

JURY FOREMAN: Yes we have.

COURT CLERK: How do you find Eastern Service Corporation on Count 1?

JURY FOREMAN: Guilty.

THE COURT: Count 2.

COURT CLERK: How do you find Eastern Service Corporation on Count 2?

JURY FOREMAN: Guilty.

THE COURT: Count 4.

COURT CLERK: How do you find Eastern Service Corporation on Count 4?

JURY FOREMAN: Guilty.

THE COURT: Count 5.

COURT CLERK: How do you find Eastern Service Corporation on Count 5?

JURY FOREMAN: Guilty.

THE COURT: Count 7.

COURT CLERK: How do you find Eastern Service Corporation on Count 7?

JURY FOREMAN: Guilty.

THE COURT: Count 9.

COURT CLERK: How do you find Eastern Service Corporation on Count 9?

JURY FOREMAN: Guilty.

THE COURT: Count 10.

COURT CLERK: How do you find Eastern Service Corporation on Count 10?

JURY FOREMAN: Guilty.

THE COURT: Count 12.

COURT CLERK: How do you find Eastern Service Corporation on Count 12?

JURY FOREMAN: Guilty.

THE COURT: Count 14.

COURT CLERK: How do you find Eastern Service Corporation on Count 14?

JURY FOREMAN: Guilty.

THE COURT: 16.

COURT CLERK: How do you find Eastern Service Corporation on Count 16?

JURY FOREMAN: Guilty.

THE COURT: 17.

COURT CLERK: How do you find Eastern Service Corporation on Count 17?

JURY FOREMAN: Guilty.

THE COURT: Count 18.

COURT CLERK: How do you find Eastern Service Corporation on Count 18.

JURY FOREMAN: Guilty.

THE COURT: Count 20.

COURT CLERK: How do you find Eastern Service Corporation on Count 20.

JURY FOREMAN: Guilty.

THE COURT: Count 21.

COURT CLERK: How do you find Eastern Service Corporation on Count 21?

JURY FOREMAN: Guilty.

THE COURT: Count 23.

COURT CLERK: How do you find Eastern Service Corporation on Count 23?

JURY FOREMAN: Guilty.

THE COURT: Count 25.

COURT CLERK: How do you find Eastern Service Corporation on Count 25?

JURY FOREMAN: Guilty.

THE COURT: Count 27.

COURT CLERK: How do you find Eastern Service Corporation on Count 27?

JURY FOREMAN: Guilty.

THE COURT: Count 28.

COURT CLERK: How do you find Eastern Service Corporation on Count 28?

JURY FOREMAN: Guilty.

THE COURT: Count 31 -- do you have 29?

JURY FOREMAN: It is not on this list. We have worked on it your Honor, I can put that down.

THE COURT: It is on the other column, that is the bribery count. We are now on 1010 counts. The last one I gave you was 28, right?

Go to 31 and take them as I give them to you.

COURT CLERK: How do you find Eastern Service Corporation on Count 31?

JURY FOREMAN: Guilty.

THE COURT: Count 29.

COURT CLERK: How do you find Eastern Service Corporation on Count 29?

JURY FOREMAN: Not guilty.

COURT CLERK: How do you find Eastern Service Corporation on the lesser count in Count 29?

JURY FOREMAN: Not guilty.

THE COURT: Count 33.

COURT CLERK: How do you find Eastern Service Corporation on Count 33?

JURY FOREMAN: Not guilty.

COURT CLERK: How do you find Eastern Service

Corporation in the lesser included offense in Count 33?

JURY FOREMAN: Not guilty.

THE COURT: Count 35.

COURT CLERK: How do you find Eastern Service Corporation on Count 35?

JURY FOREMAN: Guilty.

THE COURT: Count 36.

COURT CLERK: How do you find Eastern Service Corporation on Count 36?

JURY FOREMAN: Guilty.

THE COURT: Count 37.

COURT CLERK: How do you find Eastern Service Corporation on Count 37?

JURY FOREMAN: Guilty.

THE COURT: Count 38.

COURT CLERK: How do you find Eastern Service Corporation on Count 38?

JURY FOREMAN: Guilty.

THE COURT: Count 39.

COURT CLERK: How do you find Eastern Service Corporation on Count 39?

JURY FOREMAN: Guilty.

THE COURT: Count 41.

COURT CLERK: How do you find Eastern Service

Corporation on Count 41?

JURY FOREMAN: Guilty.

THE COURT: Count 42.

COURT CLERK: How do you find Eastern Service Corporation on Count 42?

JURY FOREMAN: Guilty.

THE COURT: 44.

COURT CLERK: How do you find Eastern Service Corporation on Count 44?

JURY FOREMAN: Guilty.

THE COURT: Count 46.

COURT CLERK: How do you find Eastern Service Corporation on Count 46?

JURY FOREMAN: Guilty.

THE COURT: Count 48.

COURT CLERK: How do you find Eastern Service Corporation on Count 48?

JURY FOREMAN: Guilty.

THE COURT: Count 50.

COURT CLERK: How do you find Eastern Service Corporation on Count 50?

JURY FOREMAN: Guilty.

THE COURT: Count 51.

COURT CLERK: How do you find Eastern Service Corporation on Count 51?

JURY FOREMAN: Guilty.

THE COURT: Count 53.

COURT CLERK: How do you find Eastern Service Corporation on Count 53?

JURY FOREMAN: Guilty.

THE COURT: Count 55.

COURT CLERK: How do you find Eastern Service Corporation on Count 55?

JURY FOREMAN: Guilty.

THE COURT: 57.

COURT CLERK: How do you find Eastern Service Corporation on Count 57?

JURY FOREMAN: Guilty.

THE COURT: Count 59.

COURT CLERK: How do you find Eastern Service Corporation on Count 59.

JURY FOREMAN: Guilty.

THE COURT: Count 61.

COURT CLERK: How do you find Eastern Service Corporation on Count 61?

JURY FOREMAN: Not guilty.

COURT CLERK: How do you find Defendant Eastern Service Corporation on the lesser included offense in Count 61?

JURY FOREMAN: Not guilty.

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THE COURT: Count 63.

COURT CLERK: How do you find Defendant Eastern Service Corporation on Count 63?

JURY FOREMAN: Guilty.

THE COURT: Count 65.

COURT CLERK: How do you find Eastern Service Corporation on Count 65?

JURY FOREMAN: Guilty.

COURT CLERK: And so say you all?

JURY FOREMAN: Yes.

MR. MC EVOY: Would your Honor poll the Jury.

THE COURT: On the motion of Mr. McEvoy on behalf of Eastern Service Corporation the Jury will be polled and Mr. Jiurti you may commence with Mr. Loschert.

COURT CLERK: Mr. Loschert you say you find the Defendant Eastern Service Corporation guilty on Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 36, 37, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty on Counts 29, 33 and 61, is that your verdict on each and every Count?

JUROR LOSCHERT: It is.

COURT CLERK: Mr. Gapinski you say you find the Defendant Eastern Service Corporation guilty on Counts

1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 36, 37, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty on Count 29, 33 and 61, is that your verdict on each and every Count?

JUROR GABINSKI: Yes it is.

COURT CLERK: Mr. Beck you say you find Eastern Service Corporation guilty on Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 36, 37, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty on Counts 29, 33 and 61, is that your verdict on each and every Count?

JUROR BECK: Yes it is.

THE COURT: Mr. Fabiszak you say you find the Defendant Eastern Service Corporation guilty on Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 36, 37, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63, and 65 and not guilty on Counts 29, 33 and 61, is that your verdict on each and every Count?

JUROR FABISZAK: Yes it is.

COURT CLERK: Mr. Boye you say you find Eastern Service Corporation guilty on Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 36, 37, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57,

59, 63 and 65 and not guilty on Counts 29, 33 and 61, is that your verdict on each and every Count?

JUROR ROYE: Yes it is, correct.

COURT CLERK: Mrs. Kaplan you say you find Eastern Service Corporation guilty on Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 36, 37, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63, and 65 and not guilty on Counts 29, 33 and 61, is that your verdict on each and every Count?

JUROR KAPLAN: Yes it is.

COURT CLERK: Mr. Caputo you say you find the Defendant Eastern Service Corporation guilty on Counts 1, 2, 4, 5, 7, 9,10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 36, 37, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty on Counts 29, 33 and 61, and is that your verdict on each and every Count?

JUROR CAPUTO: Yes it is.

COURT CLERK: Mr. Miller you say you find the Defendant Eastern Service Corporation guilty in Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 36, 37, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty in Counts 29, 33 and 61, and is that your verdict on each

and every Count?

JUROR MILLER: Yes it is.

COURT CLERK: Miss Sciacca you say you find Eastern Service Corporation guilty in Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 36, 37, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty in Counts 29, 33 and 61, and is that your verdict on each and every Count?

JUROR SCIACCA: Yes it is.

COURT CLERK: Mr. Fluhr, you say you find Eastern Service Corporation guilty in Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 36, 37, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty in Counts 29, 33 and 61 on each and every Count?

JUROR FLUHR: Yes sir.

COURT CLERK: Mr. Vassallo you say you find the Eastern Service Corporation guilty in Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 36, 37, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty in Counts 29, 33 and 61, is that your verdict on each and every Count?

JUROR VASSALLO: Yes it is.

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COURT CLERK: Miss Coleman, you say you find Eastern Service Corporation guilty on Counts 1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 36, 37, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 and not guilty on Counts 29, 33 and 61, is that your verdict on each and every Count?

JUROR COLEMAN: Yes it is.

COURT CLERK: And so say you all?

MEMBERS OF THE JURY: Yes.

COURT CLERK: The Jury is polled your Honor.

THE COURT: Ladies and gentlemen of the Jury thank you very much. You may return to your Jury room for the continuance of your deliberation as to the remaining defendants.

(The Jury left the Juryroom.)

(Continued on next page.)

THE COURT: Mr. Rosenkranz.

MR. ROSENKRANZ: Your Honor may I reserve the right to make motions on the day of sentence and until the day of sentence?

THE COURT: As you wish. I think the rules require they must be made within a certain number of days after the verdict is rendered by the Jury.

MR. ROSENKRANZ: If the Court extends that time to the date of sentence?

THE COURT: You make your motion and then if you ask for an extension I will consider it at the time but I think you must make your motion within the required Rule time.

Mrs. Behar would you stand please?

First of all, may the record indicate that I am requiring that motions as to verdicts be made by Mr. Rosenkranz on behalf of Mrs. Behar within the time scheduled in the Rules provided therefore.

Now Mrs. Behar, you have heard the Jury. You have been convicted on a number of counts and I am going to adjourn the day of sentence until I have received a pre-sentence report, at which time you will be advised when and at what time to come in for sentencing and I advise you that you come in on that date.

On the question of bail, may we continue the

bail as it is?

MR. ACCETTA: Government has no objection to bail continued as previously set.

THE COURT: The bail is as previously set for this defendant and with no enlargement of bail limits, strictly the Eastern District of New York.

MR. ROSENKRANZ: Thank you your Honor.

THE COURT: Mr. Klein on behalf of Mr. Cardona.

MR. KLEIN: I have the same motion as Mr. Rosenkranz with respect to motions and I would suggest I will make the motions within the time set forth in the Rules and I ask also the same bail conditions as presently established remain in effect.

THE COURT: Mr. Cardona, you have heard the Jury render its verdict on the different counts as against you. Sentence will be adjourned without date until I receive a pre-sentence report at which time you will be notified to come in and make sure you come in on that date or else there will be problems for you. You understand that?

DEFENDANT CARDONA: Yes sir.

THE COURT: Bail continued?

MR. ACCETTA: Yes your Honor.

THE COURT: Bail continued as previously set strictly within the Eastern District with no bail limits

enlarged.

MR. BRODSKY: I will make my motion now.

MR. ACCETTA: I may point out Mr. Cardona's residence is in the Bronx and the original bail limits included the Bronx.

THE COURT: I will not take him away from his home, all right, including the Bronx. We will go by what I said, Eastern District of New York and the Bronx.

THE COURT: Mr. Brodsky, go ahead.

MR. BRODSKY: Defendant Harry Bernstein respectfully moves the Court to set aside the verdict of the Jury upon the grounds that the same is contrary to law and contrary to the evidence.

THE COURT: Motion denied.

MR. BRODSKY: Exception. I take it the same conditions will apply to Mr. Bernstein?

THE COURT: Yes.

MR. ACCETTA: No objection.

THE COURT: Mr. Bernstein you have heard the Jury with regard to you personally and I will adjourn the sentence date without a set date until I receive a pre-sentence report from the Probation Department at which time you will be notified to come in. I am sure your bail conditions will be continued as previously set.

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MR. BRODSKY: I understand the bail conditions are restricted to the Eastern District. Will your Honor include the Southern District as well because for consultation with his attorney?

THE COURT: On account of his doctors' meetings and all that I certainly include that, the Southern District, that part of the Southern District that is within the City of New York. The Southern District is all the way up to north of Ulster County.

MR. BRODSKY: The City of New York.

THE COURT: Yes.

Mr. Soviero you are next.

MR. SOVIERO: If it please the Court, on behalf of the Defendant Rose Bernstein also known as Rose Shorenstein, I respectfully move to set aside the verdict as contrary to the weight of evidence and contrary to the law.

THE COURT: Motion denied.

MR. SOVIERO: May I respectfully move that my client be continued in the bail as set forth if it please the Court, including that portion of the Southern District within which is the confines of the City of New York?

THE COURT: Mr. Accetta you have no objection?

MR. ACCETTA: No objection.

THE COURT: Mrs. Bernstein you have heard the verdict of the Jury with regard to you on the different counts. The sentence on those counts will be adjourned without date pending a report from the probation department at which time you will be notified when to come in. Bail conditions continued as previously set.

By the way each of you, before you leave here, has to see the Probation Department. I see a representative from the Probation Department.

MR. MC EVOY: As to Eastern Service Corporation I make the application to set aside the verdict as contrary to the weight of evidence and to the law and I assume your Honor's ruling is the same.

THE COURT: Motion denied. As to the bail situation, the bail conditions are continued as they previously were set.

MR. KLEIN: With reference to Mr. Cardona's bail conditions, I understand the previous bail conditions included Westchester County and I would ask to include that.

THE COURT: Not at this time. At this time that application is denied. I am enlarging it only as to his home, that is all.

MR. ROSENKRANZ: Rather than to reserve my motion I would join and make application to set aside the

judgement of conviction as contrary to the weight of evidence and the law. I would move to set aside the verdict of conviction.

THE COURT: Motion is denied.

MR. ROSENKRANZ: As to the bail limits Mrs. Bohar has her mother-in-law who is ill and lives in the Southern District of New York.

THE COURT: Within the City of New York that will be granted.

MR. KLEIN: As long as other counsel have made the motion I will join and will ask that the verdict be set aside as contrary to the law and the weight of evidence in this matter.

THE COURT: Motion denied.

Those who have by the Jury been rendered a verdict against may leave if they wish. The others have to stay, meaning Mr. Cronin, Mr. Prescott and Dun and Bradstreet by Mr. Obermaier.

MR. OBERMAIER: May we be excused for a moment your Honor?

MR. BASHIAN: Can you wait one second Mr. Obermaier? I was going to ask for a sidebar to share a thought with the Court and to seek the Court's guidance on a matter that may affect the counsel whose defendants have not yet had a verdict rendered on them.

MR. OBERMAIER: I do not know what it could be your Honor.

(A sidebar took place as follows:)

MR. BASHIAN: Your Honor, in the light of the fact that the Jury has not yet rendered a verdict as to Dun and Bradstreet, Arthur Prescott or Herbert Cronin, and in light of the fact that it is now 5:00 o'clock, it is not very likely they will render a verdict by the end of the day and since they are not sequestered and will be going home and in light of the fact I thought I saw the two representatives of the press --

THE COURT: They have been in here all day.

(Continued on next page.)

C 1010

MEMORANDUM OF JURY VERDICTS

C 1011

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - -

fictitious information in violation of Title 18, United States Code, §1010, and conspired to bribe officials of the Federal Housing Administration of the Department of Housing and Urban Development in order to induce them to unlawfully and corruptly increase the values of real property within the Eastern District of New York and to corruptly procure the improper assignment, processing, review and approval of applications for mortgage insurance submitted by the defendant EASTERN SERVICE CORPORATION to the Federal Housing Administration of the Department of Housing and Urban Development, in violation of Title 18, United States Code, §201.

It was a part of the conspiracy for the defendants HARRY BERNSTEIN, ROSE BERNSTEIN, also known as Rose Shorenstein and EASTERN SERVICE CORPORATION, and its principals and employees including the defendants FLORENCE BEHAR, FRANK FEY, MELVIN CARDONA and PATRICIA BUCKLEY, as well as the defendant real estate broker ORTRUD KAPRAKI and her employees, attorneys and representatives including RALPH GONIAS, IRVING FIGOWITZ, HAROLD KELLER, MANUEL CARPIO, DOUGLAS HOLLENBACH and RICHARD E. BELL to submit false and fraudulent information to the Federal Housing Administration of the Department of Housing and Urban Development, and to submit such false and fraudulent information to the defendant DUN AND BRADSTREET, INC., and for the defendant DUN AND BRADSTREET, INC., to verify and report such information as true although it was known to the defendant DUN AND BRADSTREET, INC., and its employee the defendant ARTHUR PRESCOTT as well as to other responsible officials and employees of DUN AND BRADSTREET, INC., that such information was in fact false, inaccurate and incomplete.

It was further part of the conspiracy for the defendants HARRY BERNSTEIN, ROSE BERNSTEIN, also known as Rose Shorenstein and EASTERN SERVICE CORPORATION to procure false, inflated and excessive valuations on real properties whose mortgage insurance applications were being processed through Eastern Service Corporation, to procure the expeditious handling of such applications, and to cause officials of the Federal Housing Administration of the Department of Housing and Urban Development to fail to subject

said applications to proper review procedures by bribing and causing to be bribed officials of the Federal Housing Administration of the Department of Housing and Urban Development.

As a further part of the conspiracy, the defendant HERBERT CRONIN, by virtue of his position as chief underwirter at the Hempstead, New York office of the Federal Housing Administration of the Department of Housing and Urban Development corruptly used the discretionary powers entrused to him in his official office in that he wilfully, directly and indirectly increased the value of mortgage insurance commitments on behalf of the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN and EASTERN SERVICE CORPORATION and their customers. (Title 18, United States Code, §371).

In furtherance of and to effect the illegal objects of the conspiracy the defendants committed the following:

O V E R T A C T S

1. The Grand Jury repeats and realleges each and every allegation in Counts 2 through 65, as though fully set forth herein.

DEFENDANT	COUNT ONE	
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
ROSE BERNSTEIN a/k/a ROSE SHORENSTEIN	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____
DUN & BRADSTREET, INC.	GUILTY_____	NOT GUILTY_____
HERBERT CRONIN	GUILTY_____	NOT GUILTY_____
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
ARTHUR PRESCOTT	GUILTY_____	NOT GUILTY_____
MELVIN CARDONA	GUILTY_____	NOT GUILTY_____
JOSEPH JANKOWITZ	GUILTY_____	NOT GUILTY_____

C 1014

COUNT TWO

On or about the 27th day of November 1968, within the Eastern District of New York, the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR, PATRICIA BUCKLEY, ORTRUD KAPRAKI, MELVIN CARDONA and EASTERN SERVICE CORPORATION, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to insure a loan and advance of credit by the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in an application for mortgage insurance on property located at 440 41st Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT TWO	
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
MELVIN CARDONA	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1015

COUNT THREE

On or about the 15th day of November 1968, within the Eastern District of New York, the defendant DUN & BRADSTREET, INC., its employee, the defendant ARTHUR PRESCOTT and the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in a credit report for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue mortgage insurance on property located at 440 41st Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT THREE	
DUN & BRADSTREET, INC.	GUILTY_____	NOT GUILTY_____
ARTHUR PRESCOTT	GUILTY_____	NOT GUILTY_____

C 1016

COUNT FOUR

On or about the 4th day of December 1968, within the Eastern District of New York, the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR, PATRICIAL BUCKLEY, ORTRUD KAPRAKI, MELVIN CARDONA and EASTERN SERVICE CORPORATION, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to insure a loan and advance of credit by the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in an application for mortgage insurance on property located at 347 57th Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT FOUR	
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
MELVIN CARDONA	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1017

COUNT FIVE

On or about the 25th day of November 1968, within the Eastern District of New York, the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR, PATRICIA BUCKLEY, ORTRUD KAPRAKI, MELVIN CARDONA and EASTERN SERVICE CORPORATION for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to insure a loan and advance of credit by the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in an application for mortgage insurance on property located at 345 48th Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT FIVE	
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
MELVIN CARDONA	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1018

COUNT SIX

On or about the 15th day of November 1968, within the Eastern District of New York, the defendant DUN & BRADSTREET, INC., its employee, the defendant ARTHUR PRESCOTT and the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in a credit report for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue mortgage insurance on property located at 345 48th Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT SIX	
DUN & BRADSTREET, INC.	GUILTY_____	NOT GUILTY_____
ARTHUR PRESCOTT	GUILTY_____	NOT GUILTY_____

C 1019

COUNT SEVEN

On or about the 20th day of November 1968, within the Eastern District of New York, the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR, ORTRUD KAPRAKI, MELVIN CARDONA and EASTERN SERVICE CORPORATION, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to insure a loan and advance of credit by the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in an application for mortgage insurance on property located at 365 48th Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT SEVEN	
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
MELVIN CARDONA	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1020

COUNT EIGHT

On or about the 14th day of November 1968, within the Eastern District of New York, the defendant DUN & BRADSTREET, INC., its employee, the defendant ARTHUR PRESCOTT and the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in a credit report for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue mortgage insurance on property located at 365 48th Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT EIGHT	
DUN & BRADSTREET, INC.	GUILTY_____	NOT GUILTY_____
ARTHUR PRESCOTT	GUILTY_____	NOT GUILTY_____

C 1021

COUNT NINE

On or about the 28th day of October 1969, within the Eastern District of New York, the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR, PATRICIA BUCKLEY, ORTRUD KAPRAKI and EASTERN SERVICE CORPORATION, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to insure a loan and advance of credit by the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in an application for mortgage insurance on property located at 232 Lexington Avenue, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT NINE	
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1022

COUNT TEN

On or about the 28th day of January 1969, within the Eastern District of New York, the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR, PATRICIA BUCKLEY, ORTRUD KAPRAKI, MELVIN CARDONA, and EASTERN SERVICE CORPORATION, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to insure a loan and advance of credit by the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in an application for mortgage insurance on property located at 218 52nd Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT TEN	
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
MELVIN CARDONA	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1023

COUNT ELEVEN

On or about the 30th day of October 1968, within the Eastern District of New York, the defendant DUN & BRADSTREET, INC., its employee, the defendant ARTHUR PRESCOTT and the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in a credit report for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue mortgage insurance on property located at 218 52nd Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT ELEVEN
DUN & BRADSTREET, INC.	GUILTY_____ NOT GUILTY_____
ARTHUR PRESCOTT	GUILTY_____ NOT GUILTY_____

C 1024

COUNT TWELVE

On or about the 20th day of January 1969, within the Eastern District of New York, the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR, PATRICIA BUCKLEY, ORTRUD KAPRAKI, MELVIN CARDONA, RICHARD E. BELL, RALPH CONIAS, DOUGLAS HOLLENBACH, and EASTERN SERVICE CORPORATION, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to insure a loan and advance of credit by the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in an application for mortgage insurance on property located at 272 57th Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT TWELVE	
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
MELVIN CARDONA	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1025

COUNT THIRTEEN

On or about the 13th day of January 1969, within the Eastern District of New York, the defendant DUN & BRADSTREET, INC., its employee, the defendant ARTHUR PRESCOTT, and the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in a credit report for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue mortgage insurance on property located at 272 57th Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT THIRTEEN	
DUN & BRADSTREET, INC.	GUILTY_____	NOT GUILTY_____
ARTHUR PRESCOTT	GUILTY_____	NOT GUILTY_____

COUNT FOURTEEN

On or about the 26th day of February 1969, within the Eastern District of New York, the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR, PATRICIA BUCKLEY, ORTRUD KAPRAKI, MELVIN CARDONA, HAROLD KELLER, RALPH GONIAS, and EASTERN SERVICE CORPORATION, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to insure a loan and advance of credit by the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in an application for mortgage insurance on property located at 178 26th Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT FOURTEEN	
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
MELVIN CARDONA	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

COUNT FIFTEEN

On or about the 17th day of February 1969, within the Eastern District of New York, the defendant DUN & BRADSTREET, INC., its employee, the defendant ARTHUR PRESCOTT, and the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in a credit report for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue mortgage insurance on property located at 178 26th Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT FIFTEEN	
DUN & BRADSTREET, INC.	GUILTY_____	NOT GUILTY_____
ARTHUR PRESCOTT	GUILTY_____	NOT GUILTY_____

COUNT SIXTEEN

On or about the 1st day of April 1969, within the Eastern District of New York, the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR, PATRICIA BUCKLEY, ORTRUD KAPRAKI, MELVIN CARDONA, RALPH GONIAS, RICHARD E. BELL, HAROLD KELLER, HERBERT CRONIN and EASTERN SERVICE CORPORATION, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to insure a loan and advance of credit by the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in an application for mortgage insurance on property located at 63 Malta Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT SIXTEEN	
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
MELVIN CARDONA	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1029

COUNT SEVENTEEN

On or about the 16th day of June 1969, within the Eastern District of New York, the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR, PATRICIA BUCKLEY, ORTRUD KAPRAKI, MELVIN CARDONA, IRVING FIGOWITZ, MANUEL CARPIO and EASTERN SERVICE CORPORATION, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to insure a loan and advance of credit by the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in an application for mortgage insurance on property located at 256 53rd Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT SEVENTEEN	
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
MELVIN CARDONA	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

COUNT EIGHTEEN

On or about the 23rd day of December 1968, within the Eastern District of New York, the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR, PATRICIA BUCKLEY, ORTRUD KAPRAKI, MELVIN CARDONA and EASTERN SERVICE CORPORATION, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to insure a loan and advance of credit by the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in an application for mortgage insurance on property located at 321 48th Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT EIGHTEEN	
[redacted]	[redacted]	
[redacted]	[redacted]	
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
MELVIN CARDONA	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1031

COUNT NINETEEN

On or about the 31st day of October 1968, within the Eastern District of New York, the defendant DUN & BRADSTREET, INC., its employee, the defendant ARTHUR PRESCOTT and the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in a credit report for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue mortgage insurance on property located at 321 48th Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT NINETEEN	
DUN & BRADSTREET, INC.	GUILTY_____	NOT GUILTY_____
ARTHUR PRESCOTT	GUILTY_____	NOT GUILTY_____

COUNT TWENTY

On or about the 3rd day of December 1968, within the Eastern District of New York, the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR, PATRICIA BUCKLEY, ORTRUD KAPRAKI, MELVIN CARDONA, and EASTERN SERVICE CORPORATION, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to insure a loan and advance of credit by the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in an application for mortgage insurance on property located at 267 53rd Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT TWENTY	
[redacted]	[redacted]	
[redacted]	[redacted]	
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
MELVIN CARDONA	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1033

COUNT TWENTY-ONE

On or about the 2nd day of January 1969, within the Eastern District of New York, the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR, PATRICIA BUCKLEY, ORTRUD KAPRAKI, MELVIN CARDONA and EASTERN SERVICE CORPORATION, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to insure a loan and advance of credit by the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in an application for mortgage insurance on property located at 359 57th Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT TWENTY-ONE	
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
MELVIN CARDONA	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

COUNT TWENTY-TWO

On or about the 21st day of November 1968, within the Eastern District of New York, the defendant DUN & BRADSTREET, INC., its employee, the defendant ARTHUR PRESCOTT and the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in a credit report for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue mortgage insurance on property located at 359 57th Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT TWENTY-TWO	
DUN & BRADSTREET, INC.	GUILTY_____	NOT GUILTY_____
ARTHUR PRESCOTT	GUILTY_____	NOT GUILTY_____

C 1035

COUNT TWENTY-THREE

On or about the 13th day of December 1968, within the Eastern District of New York, the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR, ORTRUD KAPRAKI, MELVIN CARDONA and EASTERN SERVICE CORPORATION, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to insure a loan and advance of credit by the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in an application for mortgage insurance on property located at 414 48th Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT TWENTY-THREE	
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
MELVIN CARDONA	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1036

COUNT TWENTY-FOUR

On or about the 27th day of November 1968, within the Eastern District of New York, the defendant DUN & BRANDSTREET, INC., its employee, the defendant ARTHUR PRESCOTT and the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in a credit report for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue mortgage insurance on property located at 414 48th Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT TWENTY-FOUR	
DUN & BRADSTREET, INC.	GUILTY_____	NOT GUILTY_____
ARTHUR PRESCOTT	GUILTY_____	NOT GUILTY_____

C 1037

COUNT TWENTY-FIVE

On or about the 3rd day of April 1969, within the Eastern District of New York, the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR, ORTRUD KAPRAKI, MELVIN CARDONA and EASTERN SERVICE CORPORATION, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to insure a loan and advance of credit by the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in an application for mortgage insurance on property located at 416 52nd Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT TWENTY-FIVE
[redacted]	[redacted]
HARRY BERNSTEIN	GUILTY_____ NOT GUILTY_____
FLORENCE BEHAR	GUILTY_____ NOT GUILTY_____
MELVIN CARDONA	GUILTY_____ NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____ NOT GUILTY_____

C 1038

COUNT TWENTY-SIX

On or about the 17th day of March 1969, within the Eastern District of New York, the defendant DUN & BRADSTREET, INC., its employee, the defendant ARTHUR PRESCOTT and the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in a credit report for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue mortgage insurance on property located at 416 52nd Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT TWENTY-SIX	
DUN & BRADSTREET, INC.	GUILTY_____	NOT GUILTY_____
ARTHUR PRESCOTT	GUILTY_____	NOT GUILTY_____

C 1039

COUNT TWENTY-SEVEN

On or about the 27th day of March 1969, within the Eastern District of New York, the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, ORTRUD KAPRAKI, MELVIN CARDONA, FLORENCE BEHAR and EASTERN SERVICE CORPORATION, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to insure a loan and advance of credit by the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in an application for mortgage insurance on property located at 331 53rd Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT TWENTY-SEVEN	
MELVIN CARDONA	GUILTY_____	NOT GUILTY_____
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1040

COUNT TWENTY-EIGHT

On or about the 17th day of April 1969, within the Eastern District of New York, the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, ORTRUD KAPRAKI, MELVIN CARDONA, FLORENCE BEHAR and EASTERN SERVICE CORPORATION, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to insure a loan and advance of credit by the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in an application for mortgage insurance on property located at 338A 20th Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT TWENTY-EIGHT	
MELVIN CARDONA	GUILTY_____	NOT GUILTY_____
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1041

COUNT TWENTY-NINE

On or about the 31st day of October 1968, within the Eastern District of New York, the defendant OTTHUD KAPPAKI aided and abetted by the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN and EASTERN SERVICE CORPORATION corruptly and directly paid approximately $100, to one Joseph Jankowitz, who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal at 260 51st Street, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT TWENTY-NINE	
ROSE BERNSTEIN a/k/a ROSE SHORENSTEIN	GUILTY_____	NOT GUILTY_____
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1042

COUNT THIRTY

On or about the 31st dav of October 1968, within the Eastern District of New York, the defendant JOSEPH JANKOWITZ, who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, corruptly and directly received from Ortrud Kapraki approximately $100, with corrupt intent and in return for being influenced in his official acts as an appraiser in connection with a property appraisal at 260 51st Street, Brooklyn, New York. (Title 18, United States Code, §201(c)(1)).

DEFENDANT	COUNT THIRTY	
JOSEPH JANKOWITZ	GUILTY_____	NOT GUILTY_____

COUNT THIRTY-ONE

On or about the 4th day of February 1969, within the Eastern District of New York the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR, PATRICIA BUCKLEY, ORTRUD KAPRAKI, MELVIN CARDONA and EASTERN SERVICE CORPORATION, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to insure a loan and advance of credit by the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in an application for mortgage insurance on property located at 211 53rd Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT THIRTY-ONE	
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
MELVIN CARDONA	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

COUNT THIRTY-TWO

On or about the 29th day of October 1968, within the Eastern District of New York, the defendant DUN & BRADSTREET, INC., its employee, the defendant ARTHUR PRESCOTT and the defendant EASTERN SERVICE CORPORATION, did knowingly make, pass, utter and publish false statements in a credit report for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue mortgage insurance on property located at 211 53rd Street, Brooklyn, New York. (Title 18, United States Code, §1010 and §2).

DEFENDANT	COUNT THIRTY-TWO	
DUN & BRADSTREET, INC.	GUILTY_____	NOT GUILTY_____
ARTHUR PRESCOTT	GUILTY_____	NOT GUILTY_____

COUNT THIRTY-THREE

On or about the 30th day of January 1969, within the Eastern District of New York, the defendant ORTRUD KAPRAKI, aided and abetted by the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR and EASTERN SERVICE CORPORATION, corruptly and directly paid approximately $100, to one Joseph Jankowitz who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal at 211 53rd Street, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT THIRTY-THREE	
ROSE BERNSTEIN a/k/a ROSE SHORENSTEIN	GUILTY_____	NOT GUILTY_____
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1046

COUNT THIRTY-FOUR

On or about the 30th day of January 1969, within the Eastern District of New York, the defendant JOSEPH JANKOWITZ, who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development an agency of the United States, corruptly and directly received from Ortrud Kapraki, approximately $100, with corrupt intent and in return for being influenced in his official acts as an appraiser in connection with a property appraisal at 211 53rd Street, Brooklyn, New York. (Title 18, United States Code, §201(c)(1)).

DEFENDANT	COUNT THIRTY-FOUR
JOSEPH JANKOWITZ	GUILTY_____ NOT GUILTY_____

C 1047

COUNT THIRTY-FIVE

On or about the 2nd day of April 1969, within the Eastern District of New York, the defendant ORTRUD KAPRAKI aided and abetted by the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR and EASTERN SERVICE CORPORATION, corruptly and directly paid approximately $100, to one Edward Goodwin, who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal at 2503 Albemarle Road, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT THIRTY-FIVE	
ROSE BERNSTEIN a/k/a ROSE SHORENSTEIN	GUILTY_____	NOT GUILTY_____
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1048

COUNT THIRTY-SIX

On or about the 25th day of July 1969, within the Eastern District of New York, the defendant ORTRUD KAPRAKI aided and abetted by the defendants ROSE BERNSTEIN also known as Rose Shorenstein and EASTERN SERVICE CORPORATION, corruptly and directly paid approximately $100, to one Edward Goodwin, who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal at 371 12th Street, Brooklyn, New York. (Title 18, United States Code, §201 (b)(1) and §2).

Defendant	COUNT THIRTY-SIX	
ROSE BERNSTEIN a/k/a ROSE SHORENSTEIN	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1049

COUNT THIRTY-SEVEN

On or about the 14th day of July 1969, within the Eastern District of New York, the defendant ORTRUD KAPRAKI aided and abetted by the defendants FLORENCE BEHAR, ROSE BERNSTEIN, also known as Rose Shorenstein and EASTERN SERVICE CORPORATION, corruptly and directly paid approximately $100, to one Edward Goodwin who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal at 570 55th Street, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT THIRTY-SEVEN	
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
ROSE BERNSTEIN a/k/a ROSE SHORENSTEIN	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1050

COUNT THIRTY-EIGHT

On or about the 26th day of July 1969, within the Eastern District of New York, the defendant ORTRUD KAPRAKI aided and abetted by the defendants ROSL BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, FLORENCE BEHAR and EASTERN SERVICE CORPORATION, corruptly and directly paid approximately $100, to one Edward Goodwin who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal at 172 26th Street, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT THIRTY-EIGHT	
ROSE BERNSTEIN a/k/a ROSE SHORENSTEIN	GUILTY_____	NOT GUILTY_____
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
FLORENCE BEHAR	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1051

COUNT THIRTY-NINE

In or about October 1967, within the Eastern District of New York, the defendants HARRY BERNSTEIN and EASTERN SERVICE CORPORATION corruptly and directly paid approximately $50, to one Edward Goodwin who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal and refinancing at 190 Adelphi Street, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT THIRTY-NINE	
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1052

COUNT FORTY

In or about October 1967, within the Eastern District of New York, the defendant HERBERT CRONIN, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue excessive mortgage insurance, knowingly and wilfully overvalued a security, namely real property, on an application for mortgage insurance on property located at 190 Adelphi Street, Brooklyn, New York. (Title 18, United States Code, §1010).

DEFENDANT	COUNT FORTY	
HERBERT CRONIN	GUILTY_____	NOT GUILTY_____

C 1053

COUNT FORTY-ONE

In or about October 1967, within the Eastern District of New York, the defendant HARRY BERNSTEIN and EASTERN SERVICE COPPORATION corruptly and directly paid approximately $50, to one Edward Goodwin who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal at 185 Sackman Street, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT FORTY-ONE	
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1054

COUNT FORTY-TWO

In or about October 1967, within the Eastern District of New York, the defendants HARRY BERNSTEIN and EASTERN SERVICE CORPORATION corruptly and directly paid approximately $50, to one Edward Goodwin who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal and refinancing at 356 Van Siclen Avenue, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT FORTY-TWO
HARRY BERNSTEIN	GUILTY_____ NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____ NOT GUILTY_____

C 1055

COUNT FORTY-THREE

In or about October 1967, within the Eastern District of New York, the defendant HERBERT CRONIN, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue excessive mortgage insurance, knowingly and wilfully overvalued a security, namely real property, on an application for mortgage insurance on property located at 356 Van Siclen Avenue, Brooklyn, New York. (Title 18, United States Code, §1010).

DEFENDANT

HERBERT CRONIN

COUNT FORTY-THREE

GUILTY_____ NOT GUILTY_____

C 1056

COUNT FORTY-FOUR

In or about October 1967, within the Eastern District of New York, the defendants HARRY BERNSTEIN and EASTERN SERVICE CORPORATION corruptly and directly paid approximately $50, to one Edward Goodwin who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal and refinancing at 312 Milford Street, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT FORTY-FOUR	
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1057

COUNT FORTY-FIVE

In or about October 1967, within the Eastern District of New York, the defendant HERBERT CRONIN, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue excessive mortgage insurance, knowingly and wilfully overvalued a security, namely real property, on an application for mortgage insurance on property located at 312 Milford Street, Brooklyn, New York. (Title 18, United States Code, §1010).

DEFENDANT

HERBERT CRONIN

COUNT FORTY-FIVE

GUILTY_____ NOT GUILTY_____

C 1058

COUNT FORTY-SIX

In or about October 1967, within the Eastern District of New York, the defendants HARRY BERNSTEIN, and EASTERN SERVICE CORPORATION corruptly and directly paid approximately $50, to one Edward Goodwin who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal and refinancing at 340 Van Siclen Avenue, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT FORTY-SIX	
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1059

COUNT FORTY-SEVEN

In or about October 1967, within the Eastern District of New York, the defendant HERBERT CRONIN, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue excessive mortgage insurance, knowingly and wilfully overvalued a security, namely real property, on an application for mortgage insurnace on property located at 340 Van Siclen Avenue, Brooklyn, New York. (Title 18, United States Code, §1010).

DEFENDANT

HERBERT CRONIN

COUNT FORTY-SEVEN

GUILTY_____ NOT GUILTY_____

C 1060

COUNT FORTY-SEVEN

In or about October 1967, within the Eastern District of New York, the defendant HERBERT CRONIN, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue excessive mortgage insurance, knowingly and wilfully overvalued a security, namely real property, on an application for mortgage insurnace on property located at 340 Van Siclen Avenue, Brooklyn, New York. (Title 18, United States Code, §1010).

DEFENDANT	COUNT FORTY-SEVEN
HERBERT CRONIN	GUILTY_____ NOT GUILTY_____

C 1061

COUNT FORTY-EIGHT

In or about October 1967, within the Eastern District of New York, the defendants HARRY BERNSTEIN and EASTERN SERVICE CORPORATION corruptly and directly paid approximately $50, to one Edward Goodwin, who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal and refinancing at 616 Schenck Avenue, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT FORTY-EIGHT	
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1062

COUNT FORTY-NINE

On or about the 24th day of January 1968, within the Eastern District of New York, the defendant HERBERT CRONIN, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue excessive mortgage insurance, knowingly and wilfully overvalued a security, namely real property, on an application for mortgage insurance on property located at 616 Schenck Avenue, Brooklyn, New York. (Title 18, United States Code, §1010).

DEFENDANT	COUNT FORTY-NINE
HERBERT CRONIN	GUILTY_____ NOT GUILTY_____

C 1063

COUNT FIFTY

In or about October 1967, within the Eastern District of New York, the defendants ROSE BERNSTEIN, also known as Rose Shorenstein, HARRY BERNSTEIN, and EASTERN SERVICE CORPORATION corruptly and directly paid approximately $50, to one Edward Goodwin who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal and refinancing at 468 Miller Avenue, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT FIFTY	
[redacted]	[redacted]	
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1064

COUNT FIFTY-ONE

In or about November 1967, within the Eastern District of New York, the defendants HARRY BERNSTEIN and EASTERN SERVICE CORPORATION corruptly and directly paid approximately $50, to one Edward Goodwin who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal and refinancing at 381 Douglas Street, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT FIFTY-ONE	
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE COR. ORATION	GUILTY_____	NOT GUILTY_____

C 1065

COUNT FIFTY-TWO

In or about November 1967, within the Eastern District of New York, the defendant HERBERT CRONIN, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue excessive mortgage insurance, knowingly and wilfully overvalued a security, namely real property on an application for mortgage insurance on property located at 381 Douglas Street, Brooklyn, New York. (Title 18, United States Code, §1010).

DEFENDANT

HERBERT CRONIN

COUNT FIFTY-TWO

GUILTY_____ NOT GUILTY_____

C 1066

COUNT FIFTY-THREE

In or about November 1967, within the Eastern District of New York, the defendants HARRY BERNSTEIN and EASTERN SERVICE CORPORATION corruptly and directly paid approximately $50, to one Edward Goodwin who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal and refinancing at 726 ~~Sneidecker~~ SNEDIKER Avenue, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT FIFTY-THREE	
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1067

COUNT FIFTY-FOUR

In or about November 1967, within the Eastern District of New York, the defendant HERBERT CRONIN, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue excessive mortgage insurance, knowingly and wilfully overvalued a security, namely real property, on an application for mortgage insurance on property located at 726 ~~Sneidecker~~ SNEDIKER Avenue, Brooklyn, New York. (Title 18, United States Code, §1010).

DEFENDANT	COUNT FIFTY-FOUR	
HERBERT CRONIN	GUILTY_____	NOT GUILTY_____

C 1068

COUNT FIFTY-FIVE

In or about November 1967, within the Eastern District of New York, the defendants HARRY BERNSTEIN and EASTERN SERVICE CORPORATION corruptly and directly paid approximately $50, to one Edward Goodwin who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal at 328 1st Street, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT FIFTY-FIVE	
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1069

COUNT FIFTY-SIX

In or about November 1967, within the Eastern District of New York, the defendant HERBERT CRONIN, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue excessive mortgage insurance, knowingly and wilfully overvalued a security, namely real property, on an application for mortgage insurance on property located at 328 1st Street, Brooklyn, New York. (Title 18, United States Code, §1010).

DEFENDANT	COUNT FIFTY-SIX	
HERBERT CRONIN	GUILTY_____	NOT GUILTY_____

C 1070

COUNT FIFTY-SEVEN

In or about November 1967, within the Eastern District of New York, the defendants HARRY BERNSTEIN and EASTERN SERVICE CORPORATION corruptly and directly paid approximately $50, to one Edward Goodwin, who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal and refinancing at 452 Miller Avenue, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT FIFTY-SEVEN	
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1071

COUNT FIFTY-EIGHT

In or about November 1967, within the Eastern District of New York, the defendant HERBERT CRONIN, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue excessive mortgage insurance, knowingly and wilfully overvalued a security, namely real property, on an application for mortgage insurance on property located at 452 Miller Avenue, Brooklyn, New York. (Title 18, United States Code, §1010).

DEFENDANT

HERBERT CRONIN

COUNT FIFTY-EIGHT

GUILTY_____ NOT GUILTY_____

C 1072

COUNT FIFTY-NINE

In or about November 1967, within the Eastern District of New York, the defendants HARRY BERNSTEIN, and EASTERN SERVICE CORPORATION corruptly and directly paid approximately $50, to one Edward Goodwin, who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal and refinancing at 454 Miller Avenue, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT FIFTY-NINE	
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1073

COUNT SIXTY

In or about November 1967, within the Eastern District of New York, the defendant HERBERT CRONIN, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue excessive mortgage insurance, knowingly and wilfully overvalued a security, namely real property, on an application for mortgage insurance on property located at 454 Miller Avenue, Brooklyn, New York. (Title 18, United States Code, §1010).

DEFENDANT

ERBERT CRONIN

COUNT SIXTY

GUILTY_____ NOT GUILTY_____

C 1074

COUNT SIXTY-ONE

On or about the 14th day of February 1968, within the Eastern District of New York, the defendants HARRY BERNSTEIN and EASTERN SERVICE CORPORATION corruptly and directly paid approximately $50 to one Edward Goodwin, who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal and refinancing at 617 Vermont Street, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT SIXTY-ONE	
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1075

COUNT SIXTY-TWO

In or about July 1968, within the Eastern District of New York, the defendant ROSE BERNSTEIN, also known as Rose Shorenstein corruptly and directly paid approximately $50 to one Edward Goodwin, who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal at 741 Sheffield Avenue, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT SIXTY-TWO	
ROSE BERNSTEIN a/k/a ROSE SHORENSTEIN	GUILTY_____	NOT GUILTY_____

C 1076

COUNT SIXTY-THREE

In or about July 1968, within the Eastern District of New York, the defendants HARRY BERNSTEIN and EASTERN SERVICE CORPORATION corruptly and directly paid approximately $50 to one Edward Goodwin, who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal at 17 Wyona Street, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT SIXTY-THREE	
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1077

COUNT SIXTY-FOUR

In or about July 1968, within the Eastern District of New York, the defendant HERBERT CRONIN, for the purpose of influencing the Federal Housing Administration of the Department of Housing and Urban Development to issue excessive mortgage insurance, knowingly and wilfully overvalued a security, namely real property, on an application for mortgage insurance on property located at 17 Wyona Street, Brooklyn, New York. (Title 18, United States Code, §1010).

DEFENDANT

HERBERT CRONIN

COUNT SIXTY-FOUR

GUILTY_____ NOT GUILTY_____

C 1078

COUNT SIXTY-FIVE

In or about June 1970, within the Eastern District of New York, the defendants HARRY BERNSTEIN and EASTERN SERVICE CORPORATION corruptly and directly paid approximately $50 to one Edward Goodwin, who was then and there an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said appraiser in connection with a property appraisal at 1034 Blake Avenue, Brooklyn, New York. (Title 18, United States Code, §201(b)(1) and §2).

DEFENDANT	COUNT SIXTY-FIVE	
HARRY BERNSTEIN	GUILTY_____	NOT GUILTY_____
EASTERN SERVICE CORPORATION	GUILTY_____	NOT GUILTY_____

C 1079

JUDGMENTS AND COMMITMENTS

Edward Goodwin (September 20, 1974)

Rose Cohen (September 24, 1974)

Ortrud Kapraki (September 27, 1974)

Eastern Service Corporation
(October 4, 1974)

Harry Bernstein (October 4, 1974)

Rose Bernstein (October 4, 1974)

Florence Behar (October 4, 1974)

Melvin Cardona (October 4, 1974)

JUDGMENT AND ORDER OF PROBATION (Revised Dec. '68) C 1060 ... Form No. 101

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
SEP 20 1974
TIME A.M.....
P.M.....

UNITED STATES OF AMERICA

v.

EDWARD GOODWIN

No. 72-CR-587

M'FILED

On this 20th day of SEPT., 19 74, came the attorney for the government and the defendant appeared in person, and[1] with counsel Kenneth Rohl.

IT IS ADJUDGED that the defendant upon his plea of[2] guilty, and the Court being satisfied that there is a factual basis for the plea,

has been convicted of the offense of violating T-18 U.S.Code, Section 371

as charged[3] on count (1)

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED[4] Imposition of sentence is suspended on count (1) and defendant is placed on probation for a period of 3 years, subject to the standard conditions of probation as set forth in the standing order of this court dated October 13, 1964; and Defendant to pay a fine of $5,000.00 to stand committed until fine is paid. Stay of 60 days is granted for payment of fine. On motion of Asst. U.S.Attorney Accetta all outstanding counts are dismissed.

IT IS FURTHER ORDERED that during the period of probation the defendant shall conduct himself as a law-abiding, industrious citizen and observe such conditions of probation as the Court may prescribe. Otherwise the defendant may be brought before the court for a violation of the court's orders.

IT IS FURTHER ORDERED that the clerk deliver three certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer.

Charles P. Sifton

United States District Judge.

Clerk.

[1] Insert "by [name of counsel], counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

[2] Insert (1) "guilty, and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

[3] Insert "in count(s) number " if required.

[4] If sentence is imposed but execution suspended, and probation ordered, enter here (1) sentence or sentences, specifying counts if any, (2) whether sentences are to run concurrently or consecutively, and if consecutively, when each term is to begin with reference to termination of preceding term or to any outstanding or unserved sentence, (3) whether defendant is to be further imprisoned until payment of fine or fines and costs, or until he is otherwise discharged provided by law, (4) the facts regarding the suspension of the sentence or sentences and (5) the period of probation.

If sentence is suspended and probation ordered, enter here the following: "The imposition of sentence is hereby suspended and the defendant is placed on probation for a period of years from this date."

FPI NI—8-28-70-80M-4854

17?

JUDGMENT AND ORDER [illegible] Revised Dec. '68) C 1081 [illegible] Form No. 101

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
SEP 24 1974
TIME A.M.
P.M.

UNITED STATES OF AMERICA

v.

ROSE COHEN

No. 72-CR-587

DEFILMED

On this 24th day of SEPT., 1974, came the attorney for the government and the defendant appeared in person, and[1] with counsel William Erlbaum

IT IS ADJUDGED that the defendant upon her plea of[2] guilty, and the Court being satisfied that there is a factual basis for the plea,

has been convicted of the offense of violating T-18 U.S.Code, Section 371

as charged[3] Count (1)

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED[4] Imposition of sentence is suspended on count (1) and defendant is placed on probation for a period of 2 years, subject to the ~~xxxx~~ standard conditions of probation as set for in the standing order of this court dated Oct. 13, 1964, and defendant is to pay a fine of $2500.00 to stand committed. Stay of 1 year is granted for payment of fine. On motion of Asst. U.S.Attorney Accetta all remaining counts are dismissed.

IT IS FURTHER ORDERED that during the period of probation the defendant shall conduct himself as a law-abiding, industrious citizen and observe such conditions of probation as the Court may prescribe. Otherwise the defendant may be brought before the court for a violation of the court's orders.

IT IS FURTHER ORDERED that the clerk deliver three certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer.

Charles P. Sifton

United States District Judge.

Clerk.

[1] Insert "by [name of counsel], counsel" or "without counsel: the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

[2] Insert (1) "guilty, and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

[3] Insert "in count(s) number " if required.

[4] If sentence is imposed but execution suspended, and probation ordered, enter here (1) sentence or sentences, specifying counts if any, (2) whether sentences are to run concurrently or consecutively, and if consecutively, when each term is to begin with reference to termination of preceding term or to any outstanding or unserved sentence, (3) whether defendant is to be further imprisoned until payment of fine or fines and costs, or until he is otherwise discharged provided by law, (4) the facts regarding the suspension of the sentence or sentences and (5) the period of probation.

If sentence is suspended and probation ordered, enter here the following: "The imposition of sentence is hereby suspended and the defendant is placed on probation for a period of years from this date."

FPI NI—9-25-70-50M-4884

12

JUDGMENT AND ORDER OF PROB... Revised Dec. '66) C 1082 Form No. 10...

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT E.D. N.Y.
SEP 27 1974
TIME A.M.
P.M.

UNITED STATES OF AMERICA

v.

ORTRUD KAPRAKI

No. 72-CR-587

M'FILMED

On this 27th day of SEPT., 1974, came the attorney for the government and the defendant appeared in person, and[1] with counsel Robert J. Lazarus.

her

IT IS ADJUDGED that the defendant upon ~~his~~ plea of[2] guilty, and the Court being satisfied that there is a factual basis for the plea,

has been convicted of the offense of violating T-18 U.S.Code, Section 371

as charged[3] in count (1)

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED[4] that defendant is sentenced to imprisonment for a period of 5 years. Execution of sentence is suspended on count (1) and deft. is placed on probation for a period of 5 years, and deft. is to pay a fine of $5,000.00 to stand committed. Stay of 1 year is granted for payment of fine, subject to the standard conditions of probation as set forth in the standing order of this Co dated Oct. 13, 1964 and the following Special Conditions : (1) That she pay fine as ordered, (2) Not to be employed in the Real Estate business that would subject her to circumstances similar to those which brought about this indictme against her. On motion of Asst. U.S.Atty Accetta all out standing counts are dismissed.

IT IS FURTHER ORDERED that during the period of probation the defendant shall conduct himself as a law-abiding, industrious citizen and observe such conditions of probation as the Court may prescribe. Otherwise the defendant may be brought before the court for a violation of the court's orders.

IT IS FURTHER ORDERED that the clerk deliver three certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer.

United States District Judge.

Clerk.

[1] Insert "by [name of counsel], counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

[2] Insert (1) "guilty, and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

[3] Insert "in count(s) number " if required.

[4] If sentence is imposed but execution suspended, and probation ordered, enter here (1) sentence or sentences, specifying counts if any, (2) whether sentences are to run concurrently or consecutively, and if consecutively, when each term is to begin with reference to termination of preceding term or to any outstanding or unserved sentence, (3) whether defendant is to be further imprisoned until payment of fine or fines and costs, or until he is otherwise discharged provided by law, (4) the facts regarding the suspension of the sentence or sentences and (5) the period of probation.

If sentence is suspended and probation ordered, enter here the following: "The imposition of sentence is hereby suspended and the defendant is placed on probation for a period of years from this date."

FPI MI—8-25-70-80M-4654

187

JUDGMENT AND COMMITMENT (Rev. 2-68) C 1083 Cr. Form No. 25

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

EXAMINED

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
OCT 4 - 1974
TIME A.M.
P.M.

United States of America

v.

EASTERN SERVICE CORPORATION

No. 72-CR-587

On this 4th day of OCTOBER, 19 74 came the attorney for the government and the defendant appeared in person and[1] Mr Harry Bernstein as president and CORPORATION counsel Andrew McEvoy

IT IS ADJUDGED that the defendant upon his ~~xxxxxxx~~ verdict of guilty (Jury Trial)

has been convicted of the offense of violating T-18 U.S.Code, Sections 371, 1010 and 201(b)(1)

As charged in counts 1, 2, 4, 5, 7, 9, 10,12, 14, 16, 17, 18, 20, 21, 23, 25, 27,28,31, 35, 36, 37, 38, 39, 41, 42,44, 46, 48, 50, 51, 53, 55, 57,59, 63 and 65 of Redacted Indictment, they being counts 1, 36, 28, 12, 40, 59, 10, 2, 4, 89, 55, 46, 6, 26, 18, 20, 14, 24, 32, 60, 107, 101, 72, 115, 118, 121, ~~xxx~~, 126, 129, 134, 146, 153, 156, 169, 172, 178, 200 and 207 in the Superseding Indictment.

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, as charged / corporation

IT IS ADJUDGED that the defendant is guilty as charged and convicted. / corporation

IT IS ADJUDGED that the defendant is ~~xxxxxx

JUDGMENT AND COMMITMENT (Rev. 2-68) C 1084 Cr. Form No. 25

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

M'FILMED

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
OCT 4 - 1974
TIME A.M.
P.M.

United States of America

v.

No. 72-CR-587

HARRY BERNSTEIN

On this ~~**~~ 4th day of OCTOBER, 1974 came the attorney for the government and the defendant appeared in person and[1] with counsel Abraham H. Brodsky.

IT IS ADJUDGED that the defendant upon ~~xxxxxxx~~[2] a verdict of guilty (Jury Trial) has been convicted of the offense of violating T-18 U.S.Code, Sections 371, 1010 and 201(b)(1)

As charged in counts 1, 25, 35, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 of the Redacted Indictment, they being counts 1, 20, 60, 72, 115, 118, 121, 126, 129, 134, 146, 153, 156, 169, 172, ~~18~~ 178, ~~20~~ 200 and 207 in the Superseding Indictment.

as charged[3]

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] 5 years on count (1) and to pay a fine of $10,000.00, and 2 years on count (25) of the Redacted Indictment which is count (20) of Superseding Indictment to run concurrent with sentence imposed in count (1) and to pay a consecutive fine of $5,000.00. 5 years on each of counts 35, 38, 39, 41, 42, 44, 46, 48, 50, 51, 53, 55, 57, 59, 63 and 65 of Redacted Indictment to run concurrent with sentence imposed in count (1) and to pay ~~a~~ consecutive fines of $10,000.00 on each count making a total fine of $175,000.00, they being counts 60, 72, 115, 118, 121, 126, 129, 134, 146, 153, ~~XXXXXXXXXXXXXXXXXX~~[5] 156, 169, 172, 178, 200 and 207 of the Superseding Indictment. Stay execution of sentence pending appeal is granted. Bail continued.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Edward J. Dimock

United States District Judge.

The Court recommends commitment to[6]

Clerk.

[1]Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2]Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3]Insert "in count(s) number " if required [4]Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5]Enter any order with respect to [illegible] and probation. [6]For use of Court to recommend a particular institution.

(1) ☆ U.S. GPO 1974

JUDGMENT AND COMMITMENT (Rev. 2-68) C 1085 Cr. Form No. 25

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

M'FILMED

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ OCT 4 - 1974 ★
TIME A.M.
P.M.

United States of America

v.

ROSE BERNSTEIN, a/k/a
Rose Shorenstein

No. 72-CR-587

On this 4th day of OCTOBER, 19 74 came the attorney for the government and the defendant appeared in person and[1] with counsel Joseph F. Soviero, Jr.

IT IS ADJUDGED that the defendant upon ~~xxxxxxxx~~ a verdict of Guilty (Jury Trial)

has been convicted of the offense of violating T-18 U.S.Code, Sections 371 and 201(b)(1)

as charged[3] counts 1, 35, 36, 37 & 38

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] 4 years on count (1) plus a fine of $10,000.00. 4 years on counts 35, 36, 37 and 38 of Redacted Indictment to run concurrent with sentence imposed in count (1) and to pay a consecutive fine of $10,000.00 they being counts 60, 107, 101 and 72 of the Superseding Indictment making a total fines of $50,000.00. Stay execution of sentence pending appeal is granted. Bail continued.

IT IS ADJUDGED that[5]

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Charles P. Sifton

United States District Judge.

The Court recommends commitment to[6]

Clerk.

[1]Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2]Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3]Insert "in count(s) number " if required [4]Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5]Enter any order with respect to suspension and probation. [6]For use of Court to recommend a particular institution.

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JUDGMENT AND COMMITMENT (Rev. 2-68) C 1086 Cr. Form No. 25

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

M'FILMED

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
OCT 4 - 1974
TIME A.M.
P.M.

United States of America

v.

FLORENCE BEHAR

No. 72-CR-587

On this 4th day of OCTOBER, 19 74 came the attorney for the government and the defendant appeared in person and[1] with counsel Richard Rosenkranz

IT IS ADJUDGED that the defendant upon ~~his plea~~ a verdict of guilty (Jury Trial) has been convicted of the offense of violating T-18 U.S.Code, Sections 371, 1010 and 201(b)(1)

As charged in counts,1, 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 31, 35, 37 and 38 of the Redacted Indictment, they being counts 1, 36, 28, 12, 40, 59, 10, 2, 4, 89, 55, 46, 6, 26, 18, 20, 14, 24, 32, 60, 101 and 72 in the Superseding Indictment

as charged[3]

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] 2 years on count (1) and 2 years on each of counts 2, 4, 5, 7, 9, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28 and 31 ~~XXXXXXXXX~~ of the Redacted Indictment to run concurrent with sentence imposed in count (1) and to pay a fine of $1,000.00 ~~in the amount of $18,000.00 they being~~ counts, 36, 28, 12, 40, 59, 10, 2, 4, 89, 55, 46, 6, 26, 18, 20, 14, 24 and 32 in the Superseding Indictment, and 2 years on each of counts 35, 37 and 38 of the Redacted Indictment to run concurrent with sentence imposed in count(1) and to pay consecutive fines of $1,000.00 on each counts they being counts 60, 101 and 72 making a total ~~fine~~ of $21,000.00. Stay execution of sentence pending appeal.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

United States District Judge.

The Court recommends commitment to[6]

Clerk.

[1]Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2]Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3]Insert "in count(s) number " if required [4]Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5]Enter any order with respect to suspension and probation. [6]For use of Court to recommend a particular institution.

FILMED — 8-5-69 108-3966

127

JUDGMENT AND COMMITMENT (Rev. 2-68) C 1087 Cr. Form No. 25

United States District Court

FOR THE
EASTERN DISTRICT OF NEW YORK

MICROFILMED

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
OCT 4 - 1974
TIME A.M.....
P.M.....

United States of America

v.

MELVIN CARDONA

No. 72-CR-587

On this 4th day of OCTOBER, 19 74 came the attorney for the government and the defendant appeared in person and[1] with counsel Irving Klein

IT IS ADJUDGED that the defendant upon ~~his plea~~[2] a verdict of guilty (Jury Trial) has been convicted of the offense of violating T-18 U.S.Code, Sections 371 and 1010

As charged in counts 1, 2, 4, 5, 7, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28 and 31 of the Redacted Indictment, they being counts 1, 36, 28, 12, 40, 10, 2, 4, 89, 55, 46, 6, 26, 18, 20, 14, 24 and 32 in the Superseding Indictment.

as charged[3]

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] 2 years on count (1); and 2 years on each of counts 2, 4, 5, 7, 10, 12, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28 and 31 of the Redacted Indictment to run concurrent with sentence imposed in count (1) and to pay a fine of $1,000.00, making a total ~~fine~~ of $17,000.00 they being counts 36,28, 12, 40, 10, 2, 4, 89, 55, 46, 6, 26, 18,20, 14, 24 and 32 in the Superseding Indictment. Stay execution of sentence pending appeal is granted.

IT IS ADJUDGED that[5]

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Chas. P. Thomas

United States District Judge.

The Court recommends commitment to[6]

Clerk.

[1]Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2]Insert (1) "guilty" and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3]Insert "in count(s) number " if required [4]Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5]Enter any order with respect to suspension and probation. [6]For use of Court to recommend a particular institution.

PROCEEDINGS OF NOVEMBER 8, 1974

[Argument and Determination
of Post-Trial Motions of
Defendants Dun & Bradstreet,
Inc. and Arthur Prescott
for Judgments of Acquittal]

C 1089

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
DEC 4 1974
TIME A.M.
P.M.

UNITED STATES OF AMERICA,

Plaintiff,

-against-

DUN & BRADSTREET, INC.,

Defendant.

72 CR 587

United States Courthouse
Brooklyn, New York
November 8, 1974

B e f o r e:

HONORABLE ANTHONY J. TRAVIA, USDJ

IRA RUBENSTEIN
ACTING OFFICIAL COURT REPORTER

APPEARANCES:

DAVID TRAGER, ESQ.
United States Attorney for the
Eastern District of New York

BY: RONALD DE PETRIS, ESQ.
Assistant United States Attorney

MESSRS. WHITE & CASE

BY: JOHN MC AVOY, ESQ.
Attorneys for Dun & Bradstreet

PATRICK M. WALL, ESQ.,
Attorney for Arthur Prescott

* * * *

THE COURT: U.S. against Dun & Bradstreet and Arthur Prescott. Who wants to lead off?

MR. WALL: I'll lead off, your Honor.

Patrick M. Wall, 34 West 46th Street, for the defendant Arthur Prescott. Your Honor, the reason for my tardiness, I had a matter before Judge Stewart in the Southern District.

THE COURT: You give him preference?

MR. WALL: Since I had another matter in the Eastern District --

THE COURT: Keep talking, you're going to get in trouble with me.

MR. WALL: I'll keep quiet. This was a legitimate -- I do want to be brief, your Honor.

I would like to make a couple of comments with respect to Mr. DePetris' affidavit and opposition: 1, --

THE COURT: I'd like to ask him a couple of questions about that too.

MR. WALL: Perhaps I can foresee what some of those questions might be. I have basically two matters to bring to your attention; number one, you tried this case for nine and a half months. The idea you needed one-hundred page summary of the evidence is just incorrect. Your Honor is familiar with this case now as you were during the trial and consequently,

I saw no need to burden you with a set of papers that would simply carry weight only because of their weight.

Now, there is a novel argument, Mr. De Petris makes. I must say, I have never heard of it before but I analyzed it and I think it is a fair analysis. Mr. De Petris states the fact that two jurors voted to convict makes it a matter of law. There was a case to submit to them. Therefore, your Honor should deny our motion. I have never heard such a doctrine put, if that doctrine is appropriate, I would point out to the Court that the fact that ten jurors voted to acquit proves as a matter of law there was a reasonable doubt.

Now, that argument has been made before with defendants and I must say with consistent lack of substance. To prevent the second trial, since one juror found reasonable doubt there was reasonable doubt as a matter of law and, your Honor may be familiar with the line of cases in New York State indicating on the three-judge bench on this dais, when they had them, one learned judge found there was a reasonable doubt as a matter of law. That's not so for the defense and I expect meant it's not so for the prosecution argument. If it is so, since we had ten, they had five. It's five times more likely that there

is a reasonable doubt as a matter of law. It seems to me that argument is totally incorrect.

Your Honor sat through the trial and you saw all the evidence that was presented. The reason for our making the motion, I think is made obviously by the latter part of Mr. De Petris' affidavit. I want to address myself very briefly to that. The Government apparently intends to file a nolle. In doing so, they have seen fit to include in the statement supporting it, statements which would be in my judgment harmful to my client. Which are surprising in view of the interview of one of the jurors that was held. The statement in support of the nolle is going to, I assume, get certain publicity. As if we had a very strong case but the burden of proving guilt beyond a reasonable doubt was too much for it with respect to the ten sensible jurors. However, they found no reasonable doubt.

It goes along in that line. There wasn't any doubt among those of us to the extent this may be relevant. I suggest it is not particularly relevant but to the extent that the juror indicated what the jury felt about the case with respect to Prescott. It was so clear both to the defense lawyers who were there and to the prosecutor who listens as well that

the ten jurors who voted to acquit, could not even find a reason why there had been an indictment in the case. It was the Government's own witness that claimed there was no crime.

Your Honor has heard all the evidence and I think that with respect to the jurors' statements it would be not relevant except with the knowledge of what that juror said to come in with a nolle coupled with a statement that we had a very strong overpowering case, had it not been for ten jurors, we would have gotten the conviction. What we deserved is simply wrong. They put in every bit of proof. They did both sides and I think were given ample opportunity to put in their best case. The Government --

THE COURT: I think I leant backwards to give everybody an opportunity to go as far as they wanted.

MR. WALL: That's right, your Honor. And I think that --

THE COURT: Let me ask you something now, Mr. Wall. I at the close of the Government's case, I denied the motions. It wasn't merely a motion for acquittal, it was a motion to dismiss, which I don't think is the same as a motion for an acquittal for a directed verdict of acquittal. At the close of the whole case, I again, denied those motions. Of course,

those motions were made for several reasons and I denied them for several reasons.

One of which, may have been the motion to dismiss because the Government had not proved a prima facie quite beyond a reasonable doubt; whatever other reasons you want to add to it. Now, I denied those motions at that time but no motions were made after the return of the verdict. So, as far as I'm concerned it's still open for motions after the return of the verdict.

MR. WALL: That's right, your Honor.

THE COURT: And I think from the way I read the papers there doesn't seem to be any zeroing in on that motion as to what I should do.

MR. WALL: Well, your Honor, I had indicated --

THE COURT: You're now asking by way of this motion for a judgment of acquittal?

MR. WALL: That's correct, your Honor. Under Rule 29C, which clearly states as I read it in any event that the motion even if it was made at the appropriate time during trial, may be renewed and there is no requirement that anything new be shown.

THE COURT: What's the difference between the motion for a verdict of acquittal and for dismissal of the indictment.

MR. WALL: Well --

THE COURT: There is a difference.

MR. WALL: Yes, there is, your Honor.

THE COURT: Those motions are proper at this time in view of the fact I did give the defendants an opportunity, when I say proper, I mean can be heard. I did give attorneys for the defendants opportunities particularly you and Mr. Obermaier, time to make those motions at your leisure.

MR. WALL: Your Honor, let me try to explain what I propose as the difference between the two by an example; totally unrelated to the facts of this case. Take a case in either State of Federal courts where a witness testifies under oath that certain criminal acts were committed by this defendant. A motion to dismiss is made because of evidence brought out on cross-examination. There is a prima facie case there because there is some evidence, sufficient to create the issue which has to be resolved by a verdict of guilty or not guilty.

Assume further, however, that that witness, your Honor, on cross-examination admitted that he had bad eyes and said he didn't have his glasses on that night and suggestions were made to him it had to be this difference. And a whole host of other factors,

which any reasonable trier of the fact would consider as bearing upon the reliability of his identification. A judge could, with perfect consistency, deny the motion to dismiss because there is a motion to dismiss on case. Because in his judgment with his then, responsibility, he comes to the conclusion that no reasonable trier of the fact could find guilt beyond a reasonable doubt. What is the existence of some evidence which stretched as far as the mind might wish to stretch it, could conceivably go to an important issue and the other --

THE COURT: Well, for me to send to the jury, I must have felt that there was a little something. I don't mind telling you on the record that I was a little bit surprised at the jury's verdict.

(Continued next page.)

MR. WALL: I was also, especially since I understood --

THE COURT: I thought they would have no trouble coming in with a verdict.

MR. WALL: So did I.

THE COURT: I'm not telling you what verdict. I didn't say what kind of a verdict.

MR. WALL: I'll tell you what kind I thought they'd come in with and I must say, one of the two jurors who hung this case for the Government was one that I had absolutely insisted to my co-counsel must remain on this jury because I liked him so much. In any event I think that --

THE COURT: He took care of you.

MR. WALL: He did take care of me, yes. I think the Government was lucky to get that hung jury and I make this motion solely so it's clear, your Honor, I don't like to spin my wheels for nothing. I make it solely because I think of an unfair statement which the Government intends to publish in connection --

THE COURT: They are going to make a motion to dismiss anyway by virtue of Mr. De Petris' papers. He's going to move to dismiss it anyway. Is that what he says?

MR. WALL: In effect, sure.

THE COURT: He's already sought the usual 900 and they have gotten consent. The next move was to make a motion to dismiss except that you came in with your motions before they did. Do I read it correctly?

MR. WALL: I think you read his papers correctly. The sole reason for my making this motion because of what I believe to be especially in light of what the Government knows, is an unfair statement with --

THE COURT: He didn't make it yet.

MR. WALL: He's going to make it.

THE COURT: I might advance his motion and grant it now.

MR. WALL: I hope you won't.

THE COURT: You don't want me to?

MR. WALL: I would prefer you not and that's all I have to say.

THE COURT: Mr. McAvoy?

MR. MC AVOY: Yes, your Honor. Your Honor, I'll be brief and simply first adopt all that --

THE COURT: I'm glad you're here instead of Mr. Obermaier because if he was here it wouldn't be brief, it would be a long brief.

MR. MC AVOY: That's probably one of the many differences between us, your Honor.

THE COURT: I still think he's a very fine and able lawyer.

MR. MC AVOY: Thank you.

THE COURT: Actually, I'm just quibbling as I usually like to do. Get a little fun out of everything I do.

MR. MC AVOY: If he weren't otherwise engaged, he would be here.

THE COURT: Who's lucky?

MR. MC AVOY: Regarding this point that you addressed to the question you addressed to Mr. Wall, I would like to say, I think you keyed in on something there that is of extreme importance.

Your Honor, expeditiously said the denial of the motion at the close of the Government's case was because there was a prima facie case. Now, at this stage, the standard is, as I understand it, though it's sometimes used as insufficient evidence or no evidence, Court chooses all kinds of language but what is meant by that that the evidence is not that which ought reasonably to satisfy a jury; of a fact, that in this instance the Government sought to establish.

Now, that brings not merely the needle in a haystack theory; I call the prima facie case theory into play, but brings upon your Honor the obligation to

in effect exercise a judgment about the quality of the evidence; that reasonable men are, have been, have presented to them in accordance with the law and how they are to evaluate it in accordance with the Court's instructions on the law.

Now, we think that and we have, there are a number of points that could be, could have been raised. We have tried to zero in because we think it's -- we think it's the crucial weakness of the Government's case on something that your Honor showed himself to be truly concerned about at the time of the close of all the evidence and that was, what's the evidence of Dun & Bradstreet's participation in this conspiracy? And, as I say, I think the Government responded to that in essence by saying, well, your Honor, we had nine months of trial. We have had 20,000 pages of transcript here and a little thing here, the jury may rely upon here, another little thing here and here's another little thing there. Therefore, I think, your Honor was prevailed upon to permit that matter to go to the jury perhaps with a -- as you yourself have said, a moment ago, with an expectancy as to how the jury would view that evidence. We are here today --

THE COURT: That's your interpretation.

MR. MC AVOY: Yes, sir. We're here today because we were surprised at the jury's inability to resolve those factual questions in light of your Honor's charge. We think that, yes, and I don't plan to reiterate all the evidence about Mrs. Craybaykee (phonetic), how she lied in various reports. Miller's testimony, your Honor, fully familiar with all of that. It plain adds up to a series of facts utterly inconsistent with participation in the conspiracy that key issue, that your Honor focused on at that time. We think that proof was missing in this case when any reasonable man evaluates the evidence in total and for that reason, we would ask your Honor at that time to grant our motion to acquit.

I could be longer, but I promised to be brief.

THE COURT: Mr. De Petris?

(Continued next page.)

1-3 fls

MR. DE PETRIS: Yes, your Honor. I will also be brief, your Honor.

Though I must admit I was disappointed at Mr. Oppenheimer that he didn't show up to have the usual repertoire that we have had in the past, please tell him he's remembered in his absence.

I'll just be very brief, your Honor. In response to, first, as to some two or three of the things that Mr. Wall said. Once again, Mr. Wall seems to enjoy taking my remarks out of context. The reference --

THE COURT: Part of the game.

MR. DE PETRIS: Pardon?

THE COURT: That's part of the game.

MR. DE PETRIS: Right. The reference in my affidavit in opposition on page 6 as to two of the jurors, etc., was a response. Was not say that is as a matter of law shows the evidence was sufficient. Was a response to the point made in Dun & Bradstreet's brief showing that ten jurors found, thought there wasn't sufficient evidence. The only point I'm making there is the evidence was sufficient, so that a reasonable mind might conclude there was a reasonable doubt or there wasn't a reasonable doubt. It was a question for the jury and if they're going to point to

ten jurors and say they couldn't find it beyond a reasonable doubt, I point to the two that could. Then, the state of movements and the motion for acquittal had to be denied because it is a jury question.

The second point I would make in response --

THE COURT: That doesn't bind me.

MR. DE PETRIS: No, your Honor, no.

THE COURT: Doesn't bind me. You are playing with numbers. He's using ten and you're using two.

MR. DE PETRIS: Only reason I use two was in response to the argument not a point I'm making has any --

THE COURT: It doesn't because I feel very strongly that I am as aware of every iota of evidence that was produced by both, by all sides in this case and I think it was apparent during the course of the trial that I kept very good notes. In fact, I had to remind all counsel many many times about numbers of things and things that they had said. So, that I -- I got this case pretty much. I called it and if you remember, my --

MR. DE PETRIS: I will remember those words.

THE COURT: I didn't know how prophetic that would be. I didn't think that might be my last big trial. But I did about that and I really took a lot of

pains to try to do the best job I knew how on that case. So I paid very careful attention and listened to every witness and some of the witnesses were, you know, they used the word "bizarre." Some of these witnesses were really something for the books. I could well understand how a jury could take as long as they did or either reach or not reach a verdict. Had to take all those things into consideration and maybe, my thought processes are a little different than theirs. I had my own ideas and I don't mind telling you again, like I told them, it surprised me that it took them as long to do what they did. Whether they did the right thing or not, I'm not so sure. But go ahead.

MR. DE PETRIS: Your Honor has mentioned two points there that I'd like to address myself to; one, I would certainly hope the length of the trial had nothing to do with your Honor's retirement.

THE COURT: It did not. Let me put that to rest right now. I enjoyed that case, every day of it. Like everything else I have done all my life, I always enjoyed my job. When it came to up and quit, I upped and quit. Wouldn't be the first time and it had nothing to do with the case. I have enjoyed every day I have been a judge in this court.

MR. DE PETRIS: We're glad of that. Second

thing,-your Honor mentioned along that line might be worth this of some comment. The Court was fully familiar with the evidence and that was obvious from the discussions that were had on the motions at that time. That is one of the points I'm making now, a substantial period of time is past since that time when the evidence was fresh in your minds of all parties concerned. I know at least speaking, at least for myself, at this time that evidence is not fresh in my mind.

Now, it would take a thorough review of the transcript to have the evidence as fresh in all of our minds, at least my mind, as it was at that time. That was the point, the point I was making. The test on a motion for a judgment of acquittal, under Rule 29(c) is the same after the verdict as it was before under the motions at the close of the Government's case, under the close of all the evidence and under Rule 29(a); that is, given full play to the right of the jury to determine credibility and weigh the evidence and draw justifiable inferences of fact. Can a reasonable mind fairly conclude guilt beyond a reasonable doubt? I think probably one of the purposes of the time limitation and the rule of the seven-day period is so that the evidence would be fresh in the minds of all

concerned. Because you do have to know the details of the evidence in order to rule on such a motion. That was the point I was making in my brief, in my affidavit of opposition.

Extensive period of time has passed in light of that without a full discussion of all the evidence, it's difficult to home in on these points that are being made. I think what's significant about the motion papers, it immediately was ignored. There was no discussion of the crux of the Government's case, which involved the submission of false statements, concerns purported or full self-employment. I simply didn't see any discussion of that evidence in the papers and that was the crux of the case.

So that was the point in that regard.

Mr. McEvoy --

THE COURT: In fact, I made that very easy for the jury, if you recall. I permitted it to go into the jury room, the parts of those reports.

MR. DE PETRIS: Right.

THE COURT: Which were claimed by the Government to have faults. We circled in red the --

MR. DE PETRIS: Right. They had them.

THE COURT: And I have it and I stillhave it

right here.

MR. DE PETRIS: Mr. McAvoy referred generally to two facts that he recalls from the testimony that were inconsistent with the conspiracy. If your Honor will recall at the end of the -- during the arguments of the motions, under Rule 29 for acquittal, during the course of the trial and also in the Government's summation, Mr. Mation referred to a whole series of facts, which were, did show an effort by Dun & Bradstreet and Mr. Prescott to accommodate Eastern Service Corporation, despite the fact they were put on notice of the various suspensions. Incidentally, this high probability of false statements appearing in some of the applications and we made the point then that, if you agree that you will intend to send in reports, even though you're aware of a high probability of false statements are going to be in some of those applications that you are part of a conspiracy, but that agreement does not have to be expressed, it can be implicit. It doesn't even have to be a conversation between the parties. It has to be an understanding that is reached between, between Eastern Service Corporation and Dun & Bradstreet.

Dun & Bradstreet will come whether -- who will in turn submit to FHA, despite the facts.

THE COURT: Didn't I so charge?

MR. DE PETRIS: That's correct, your Honor.

The other point I make, in response to Mr. McEvoy, I think here, again, about the substantive counts in the indictment.

THE COURT: He has them in his papers. He does mention in his brief --

MR. DEPETRIS: Surely, there was sufficient evidence when the creditor's report went to Mr. Prescott and they told him about the problems they were having. Told him about all those self-employed applicants living in the same area of Brooklyn, and told them how they would ask them who are your suppliers?

THE COURT: Self-employed painters supposedly making fifteen thousand dollars a year. Girls would ask him, well, who are your suppliers? Couldn't give an answer. Who are your customers? Couldn't give an answer. Do you have a ladder? Do you have a vehicle? Did you use in the course of your business, did you have a telephone? He couldn't get any answers to any of those questions.

They told Mr. Prescott about it and his response was, you don't have to go through that. So, he surely,

there was sufficient evidence so that reasonable minds might conclude though he need not do so, that Mr. Prescott was put on notice.

That there were some false statements going in, some of the applications, he did not act on that notice, but instead closed his eyes to it, and disregarded it.

When you talk about criminal intent, I mean, that is a measurable word, criminal intent, but all it means is the defendant, that the person shows a disregard for the law. It doesn't have to be intentionally.

Disobeyance of the law is sufficient, if he intentionally disregards the law. Surely, there was enough evidence here with all the series of times the reporters went to Mr. Prescott to put him on notice, that he was simply disregarding the law.

I recall again, there -- it was a long time ago, I haven't had a chance during the course of the three days since we got the motion papers to review the testimony but I recall one instance where the girl, one of the girls even talked to Mr. Prescott about the legal liability. They were concerned about it. I recall another incident where the girls were

so, so sure that something phoney was going on, that they were going to go out to the FHA office, but then when they saw Eastern Service --

THE COURT: Was Mrs. Santiago--

MR. DE PETRIS: Your Honor's recollection is better than mine.

THE COURT: She said that. I remember it was Santiago who said she got the idea, maybe she ought to go and talk to someone herself. Then, she decided not to, because she found that they were in the same building.

I got a pretty good idea. Go ahead.

MR. DE PETRIS: The reporters kept coming to Mr. Prescott, to do something about it.

THE COURT: Even Mr. Miller, to go to Eastern Service. Is that sufficient evidence to show a disregard, which is all we are concerned with here.

MR. DEPETRIS: That is the essence of the Government's position and the test here, is giving full play to the right of the jury to determine credibility and to weigh any evidence and to hear the questions, to give them full weight.

I didnt stop them from doing that. They had all the time they needed. That is the point that we are making here, your Honor.

That the evidence, the jury could not conclude there was a reasonable doubt under that situation. It is a question for the jury to decide, therefore, the motion should be denied.

As your Honor is aware from the motion papers, the Government has made a decision it will not retry the case, and has sent the form 900 down to Washington to receive authorization to dismiss the indictment against Dun & Bradstreet and Prescott.

THE COURT: Why? Because you feel --

MR. DEPETRIS: Yes, your Honor, I would --

THE COURT: Because you feel what?

MR. DEPETRIS: I would like to hand up to the Court at this time, a statement in support of dismissal which I will serve copies on Mr. MacEvoy and Mr. Wall.

THE COURT: This is going to be added to your motion to dismiss it and when you make your motion?

MR. DE PETRIS: I will do that now, your Honor.

THE COURT: Then, why -- you are going to move now?

MR. DE PETRIS: Yes, your Honor.

Having received authorization from the Department of Justice to dismiss the indictment that was received on November 4, Monday of this week, the Government would

move to dismiss the indictment 72 CR 57 against the defendant Dun & Bradstreet, and Arthur Prescott, for the reasons set forth in that statement. I would ask that be filed at this time, in support of the oral motion the Government is now making.

Without reading the whole thing -- I will wait until your Honor reads it. I only have two brief comments to make, your Honor. That is, to point out briefly what I deem is the difference between the two motions. The motion is being made via the defendants, going to the question of judgment of acquittal.

Is there sufficient evidence, such as a jury could conclude, either way, whether or not there is or is not a reasonable doubt?

That motion has already been decided by the Court on two separate occasions, after the most thorough consideration of all of the evidence. And we have seen nothing new today, as a matter of fact, we had not even had an opportunity to discuss all the evidence because of the lapse of time since the trial.

Secondly, the motion that the Government is making, goes to a different point. Not to the sufficience of evidence. That has already been ruled

upon twice by the Court.

The question before the Court and the Government's motion is, is it in the interest of justice to have a retrial of the case? And as to the statement, it points out there are basically, two main factors involved in that determination by the Government. That it would not be in the interest of justice to retry the case. One, although there is sufficient evidence on the issue of criminal intent, it is not overwhelming evidence, contrary to what Mr. --

THE COURT: Instead of using the word "sufficient" why don't you say some?

(Continued on next page.)

MR. DE PETRIS: The point I ammaking, your Honor, there is sufficient evidence that the jury could decide it either way. So it is a general question of fact for the jury. However, it is not overwhelming evidence, and the Government's consideration that the evidence in the first place, was presented in as favorable a light as possible.

It is unlikely that in a second trial, it would be,also convince twelve jurors beyond a reasonable doubt of guilt.

The question of criminal intent; the second factor in making the decision, there is another avenue or approach the Government can take to vindicate its own right; that is a civil proceeding.

And as is being pointed out in the statement, there is preparation for that at this time. In fact, there is another approach which can be taken.

THE COURT: You will be prohibited from doing that either way, whether I agree or whether I dismiss. You are not going to estopped from proceeding in a civil --

MR. DE PETRIS: That's correct, your Honor, but I'm --

THE COURT: You are giving me as that reason why

I should not acquit?

MR. DEPETRIS: No, no, your Honor. No. I sorry, your Honor, that was -- I was giving that as a reason in support of the Government's motion to dismiss.

In other words, since we feel there is another approach that we can take, -there is no reason to go through a second criminal trial. We have been through that once, and it ended up with a stalemate.

THE COURT: All right. The Court will accept the oral motion of the Government, and will also accept only for the purposes of argument, of course, and will also accept the statement as Mr. Justice to have it filed.

I am taking on both motions now.

MR. WALL: Your Honor, would you give me thirty more seconds, please? First of all, your Honor ruled --

THE COURT: I thought you wanted thirty more seconds to read. I want to give you a chance to answer.

MR. WALL: I have read it.

THE COURT: Go right ahead.

MR. WALL: First of all, your Honor, Rule 29C

makes it clear, even though a motion for a judgment of acquittal was previously made and denied, it may be renewed after trial without any showing of any evidence.

The defense that two jurors voted to convict, means nothing, because as your Honor well knows, motions for judgments of acquittal made under 29C sometimes are granted even in the light of a jury verdict of guilty.

Obviously, the purpose of that rule must be --

THE COURT: On the question of conspiracy, count one, if my eyes do not deceive me, the jury voted 11 to 1 for acquittal on Dun & Bradstreet.

MR. WALL: Maybe so.

THE COURT: On two, on Prescott --

MR. WALL: I never really viewed the jury sheet.

THE COURT: Being 10 and 2, is satisfying me anyway.

MR. WALL: Your Honor can see although -- page four.

THE COURT: Of this?

MR. WALL: Government's proposed statement. In connection with its statements to dismiss. Contain

THE COURT: When either of you make those statements concerning what the jury said, this is chatter.

MR. WALL: It is, your Honor.

THE COURT: Between you and a juror, or jurors, after I declare a mistrial.

MR. WALL: That's right, your Honor.

THE COURT: Not part of the record, not part of the evidence, or did I have them, I did not talk to any juror.

MR. WALL: Your Honor, I know that.

THE COURT: So, I don't know what the jurors were thinking.

As far as I am concerned, I have my own mind insofar as I make a decision based upon what I heard.

MR. WALL: I agree with your Honor, but here's my point.

This document was in preparation before I made my motion. It was in preparation before Dun & Bradstreet made any motion. It was the Government that initially put into this paper what it was the jury told it. I was there and no juror said that, they, absent that expressed obligation, we thought the evidence was insufficient.

They were told, find out that jurors didn't see any reason why the Government brought this case. It is the Government that tries to indicate, referring to its conversation with jurors that they were so close to conviction when it turned out the jury said, that their own witnesses, the three girls, to their minds, at least, to the minds of ten of them, proved innocence.

I think this kind of statements takes an unfair shot at my client. They had their best shot for nine and a half months. It wound up with ten jurors feeling that the case shouldn't have been brought to come in with a document, which made -- reads this way. That I -- that's why I made the motion. I had other things to do thismorning or last week, and that's the only reason I made the motion.

I think it's unfair.

THE COURT: Mr. McEvoy?

MR. MCEVOY: Just two points, I think, your Honor. The first is, your Honor is urged in opposition to our motion, that you are not sufficiently familiar with the case to consider it. We have in some way imposed upon your Honor. I find the bottom of the first page of dismissal, however, the Court is fully familiar with the case ---

MR. DE PETRIS: Familiar, not fully --

MR. MCEVOY: Then, we find --

MR. DE PETRIS: It is a difference.

MR. WALL: I continue to hear statements from behind me somewhere. I am not just sure where --

THE COURT: We have no gallery.

MR. WALL: I thought t-ere were -- the Government begins discussion of the reasons for dismissal by applying what we focussed on in our papers. That is, the weaknesses in their case involved the elements of knowledge and criminal inten. That's why we are here today, your Honor. They have said other places, their evidence was not strong enough to convince twelve jurors -- and we are back into numbers again.

I would only think the observations that apparently they doubt that is, something more than a grand statement. They couldn't convince three.

THE COURT: Want to say something else, Mr. De Petris?

MR. DE PETRIS: Just in response to what Mr. Wall said, your Honor.

THE COURT: He is not your --

MR. DE PETRIS: No, I am not going to -- that only happened at the beginning.

MR. WALL: No, there is no jury, --

MR. DE PETRIS: Although, again, it is irrelevant to the motion that Mr. Wall is making, what is said in this statement as to what the jurors told us, is what the jurors told us. It was the fine line between bad judgement, poor judgment, running a sloppy office, when it finally becomes deliberate disregard, that is, the fine line where the evidence was sufficient, either side of the line, ten jurors on one side and two on the other.

They said they pored over those volumes, remembered those thick volumes of the FHA. Those people pored over those volumes to find something in there which pressed an expression, obligation by Dun & Bradstreet.

Since they couldn't find it --

THE COURT: All of which was favorable to your side. I gave them everything.

MR. DE PETRIS: Oh, yes.

THE COURT: That might have given them the pointer to help your argument.

MR. DE PETRIS: Those jurors had --

THE COURT: That did not indicate how I felt personally.

MR. DE PETRIS: No, I realize that. Those jurors fully agreed those people had all the facts before them. It was sufficient, and it could have fallen either side of the line. That's all I would say at this point.

THE COURT: Well, anybody else want to say anything? I -- I feel very strongly about this case, because of my total participation in it. I guess the Judge can say that, but in this particular case, I did participate with all my heart and mind. I worked as hard as anybody in this case worked.

You fellows knew that, and I was taking many papers home every night, and going over them very thoroughly.

So I could be prepared for all of you the following morning, and I also worked on weekends, Saturday and Sunday. And my charge in that case, began, I'd say, in preparation anyway, two or three days after the trial began.

So that I had the full preparation of that trial to come up with a charge that I ultimately gave.

I don't mind saying that I was personally disappointed in count one insofar as Prescott and

Dun & Bradstreet were concerned, because I didn't think there were very much to the conspiracy count.

But I felt that in view of your tremendous amount of work and the evidence that you produced, that there might be that smidgeon that I did not foresee at any time.

But upon retrospect, I would say that insofar as count one was concerned, I could have directed a verdict of acquittal as easily as I let it go to the jury, which leaves the substantive count, which, of course, makes a lot more difficult for the Government to sustain their evidence on the substantive count.

Then, on the conspiracy count, from all of the evidence that I heard, and from the amount of effort, and I want to say, too, we have great juries as far as I am concerned -- I have never in my years of activity as a trial lawyer -- and in my short ten years as a judge, ever seen a jury participate as whole-heartedly as this one did.

Remember, we had six alternates and at the very close of the case, I would up excusing five of them. So we were there with the same jury every time except when we had to excuse, during the early part of

the trial for obvious reasons at that time, but the jury that we had, certainly was a very good jury and it took them an awful long time in their deliberations to come up with what I thought they might have come up with insofar as Prescott and Dun & Bradstreet were concerned.

They felt that until the very end. If they do everything else, every other decision until they finally had to come up with something there. If you recall, I sent them back practically telling them they ought to come up with something, and they didn't.

I feel very strongly I could have granted a motion for acquittal then, and I shall do so now against Prescott and Dun & Bradstreet.

MR. WALL: Thank you, your Honor.

MR. MC EVOY: Thank you, your Honor.

MR. DE PETRIS: Is that on both the conspiracy count and substantive?

THE COURT: On the whole indictment, on the whole indictment. They are going to appeal so you appeal, too, if you can.

MR. DEPETRIS: Who is going to appeal?

THE COURT: The motion of the Government is denied.

* * * * *

C 1125

ORDER OF NOVEMBER 25, 1974
GRANTING MOTIONS OF DEFENDANTS DUN &
BRADSTREET, INC. AND ARTHUR PRESCOTT
OR JUDGMENT OF ACQUITTAL

C 1126

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
NOV 25 1974
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

DUN & BRADSTREET, INC. and ARTHUR PRESCOTT,

Defendants.

72 Crim. 349
72 Crim. 587

ORDER

MICROFILMED

This cause having come on for hearing on the motions by defendants Dun & Bradstreet, Inc. and Arthur Prescott, pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure, for a judgment of acquittal of said defendants Dun & Bradstreet, Inc. and Arthur Prescott of each count charged against either of them in Indictment 72 Cr. 587, and on the motion of the United States of America for an order dismissing said indictment as against defendants Dun & Bradstreet, Inc. and Arthur Prescott; and said motions having been argued before the Court upon all the evidence; and the Court having heard counsel for defendants Dun & Bradstreet and Arthur Prescott, and counsel for the United States of America; and due deliberation having been had thereon; it is

ORDERED, that the motions of defendants Dun & Bradstreet, Inc. and Arthur Prescott for a judgment of acquittal on counts 1, 3, 5, 13, 19, 21, 27, 33, 37, 41, and 47 be, and the same hereby are, granted; and it is

FURTHER ORDERED that the motion of the United States of America to dismiss all other counts of said indictment

C 1126 a

against defendants Dun & Bradstreet, Inc. and Arthur Prescott be, and the same hereby is, granted; and it is

FURTHER ORDERED that Indictment 72 Cr. 349 be, and the same hereby is, dismissed as against defendants Dun & Bradstreet, Inc. and Arthur Prescott.

Dated: Brooklyn, New York
November 25, 1974

Anthony P. Travia

U.S.D.J.

C 1127

ILLUSTRATIVE BLANK FORMS

C 1128

FHA FORM NUMBER 2800

[Application for Property
Appraisal and Commitment]

C 1129

FHA FORM NUMBER 2900

[Application for Credit Approval]

FEDERAL HOUSING ADMINISTRATION

CASE NO.

MORTGAGEE'S APPLICATION FOR PROPERTY APPRAISAL AND COMMITMENT FOR MORTGAGE INSURANCE UNDER THE NATIONAL HOUSING ACT

☐ SEC. 203(b) ☐ SEC. _____

PROPERTY ADDRESS

MORTGAGEE Name and Address including ZIP Code *(Please Type)*
(Please locate address within corner marks)

Telephone No.

This form is a request for an appraisal and a commitment to insure a loan on an individual property.

We cannot process incomplete applications.
Rejecting them is costly.
Please help by giving us well prepared applications.
Keep all entries within alloted spaces.

EXISTING HOUSE ☐

Name of Occupant *(or person to call if unoccupied)* | Tel. No. | Key Encl. ☐ *(If unfurnished)*

Mon. & Yr. Completed ☐Never Occup. ☐Vacant Occupied by ☐Owner ☐Tenant at $ Per Mo. ☐Furn. ☐Unfurn.

PROPOSED ☐
SUBSTAN. REHAB. ☐
UNDER CONSTR. ☐

Builder's Name & Address Including ZIP Code | Tel. No. | Model Identification

Plans: ☐ First Subm. Prob. Repeat Cases ☐ Yes ☐ No ☐ Prev. Proc. as FHA Case No.

DESCRIPTION						
☐ Detached	☐ Wood siding	___ Stories	___ Bedrooms	☐ Store Rm	Mineral Rights Reserved	Type of Heating
☐ Semi-det.	☐ Wood shingle	☐ Split Foyer	___ Liv. room	☐ Util. Rm.	☐ No ☐ Yes *(Explain)*	
☐ Row	☐ Asb. shingle	☐ Bi-Level	___ Din. room	☐ Garage	Utilities: Public Comm. Individual	☐ Cent. Air Cond.
☐ Frame	☐ Fiber board	☐ Split Level	___ Kitchen	☐ Carport	Water ☐ ☐ ☐	☐ Wall Air Cond.
☐ Masonry	☐ Brick or stone	☐ Full Basement	___ No. rms.	No cars	Gas ☐ ☐ ☐	Type of Paving (Str.) ☐ None
☐ Concrete	☐ Stuc. or c. blk.	___% Basement	___ Baths	☐ Built-in	Elect. ☐ ☐ ☐	
☐ Factory Fabricated	☐ Aluminum	☐ Slab on Gr.	___ ½ Baths	☐ Attached	☐ Underground Wiring	☐ Curb & Gutter
☐ Yes ☐ No	☐ Asph. Siding	☐ Crawl Space		☐ Detached	Sanitary: Sept. tank / Cess Pool	☐ Sidewalk
	☐ _____	Living Units	% Non-res.		Sewer ☐ ☐ ☐ ☐	☐ Storm Sewer

EXTRA FEATURES						
☐ Fireplace	☐ Rec. Room	☐ Sw. Pool	☐ Enclosed Porch	☐ Breezeway	☐ Fence
☐ Extra Fire Pl.	☐ Expand Attic	☐ Fin. Attic	☐	☐	☐

SPEC. ASSESS. Prepayable $_____ Non-Prepay. $_____
Int. ___% Ann. Pay. $_____ Unpd. Bal. $_____ Rem. Term ___ Yrs.

LOT _____ X _____ ☐ Irr. ☐ Acres _____ Sq. Ft.

GENERAL LOCATION:

ANN. R. EST. TAXES $ | ANN. FIRE INS $ | SALE PRICE $

EQUAL OPPORTUNITY IN HOUSING

Federal laws and regulations prohibit discrimination because of race, color, religion, or national origin in the sale or rental of residential property. Numerous state statutes and local ordinances also prohibit such discrimination. In addition, section 805 of the Civil Rights Act of 1968 prohibits discriminatory practices in connection with the financing of housing.

If FHA finds there is noncompliance with any applicable antidiscrimination laws or regulations, it may discontinue FHA business with the violator.

LEGAL DESCRIPTION *(Attach one page if necessary)*

SHOW BELOW: Shape, location, distance from nearest intersection and street names. Mark N at NORTH point.

REMINDER. . . . .HAVE YOU. . . . . .

1. Attached all necessary exhibits? (See instructions)
2. Enclosed a key to the house? Failure to gain access causes useless trips by our appraisers.
3. Asked for appraisal of equipment items if you wish them included in the FHA valuation?
4. Explaincd any unusual facts which will aid us in processing?
5. Detached the last long sheet for retention as your file copy?

Please consider the following TITLE EXCEPTIONS in value:

Please consider the following equipment in value:

LEASEHOLD Ground Rent *(Per Yr)* $ Lease is: ☐ 99 years ☐ Renewable ☐ FHA Approved Expires

BUILDER/SELLER'S AGREEMENT: All Houses: The undersigned agrees to deliver to the purchaser FHA's statement of appraised value. Proposed Construction: The undersigned agrees, upon sale or conveyance of title within one year from date of initial occupancy, to deliver to the purchaser FHA Form 2544, warranting that the house is constructed in substantial conformity with the plans and specifications on which FHA based its value and to furnish FHA a conformed copy with the purchaser's receipt thereon that the original warranty was delivered to him. All Houses: In consideration of the issuance of the commitment requested by this application, I(we) hereby agree that any deposit or downpayment made in connection with the purchase of the property described above, whether received by the undersigned or an agent of the undersigned, shall upon receipt be deposited in escrow or in trust or in a special account which is not subject to the claims of my creditors and where it will be maintained until it has been disbursed for the benefit of the purchaser or otherwise disposed of in accordance with the terms of the contract of sale.

Signature: ☐ Mortgagee ☐ Builder ☐ Seller ☐ Other 19

MORTGAGEE'S CERTIFICATE: The undersigned mortgagee certifies that to the best of its knowledge all statements made in this application and the supporting documents are true, correct and complete.

Signature/Title of Mortgagee Officer 19

WARNING: Section 1010 of Title 18, U.S.C., provides: "Whoever, for the purpose of . . . influencing such Administration . . . makes, passes, utters, or publishes any statement, knowing the same to be false . . . shall be fined not more than $5,000 or imprisoned not more than two years, or both."

FHA FORM NO. 2800 *(Reverse)* MORTGAGEE'S WORK SHEET

FEDERAL HOUSING ADMINISTRATION

PREPARATION OF APPLICATION FOR CREDIT APPROVAL

For processing the credit of mortgagors under any FHA 1-to 4-family program. This form is primarily for use in converting an outstanding com-

This form is a request for an appraisal and a commitment to insure a loan on an individual property.

REQUIRED EXHIBITS TO BE SENT WITH APPLICATION

SALES CONTRACTS

In cases involving known borrowers accompanied by a Certificate of Reasonable Value issued by the Veterans Administration, we urge that lenders submit a copy of the sales contract with this application, if available.

HOUSES PROPOSED OR UNDER CONSTRUCTION

1. Complete working drawings, in duplicate, including plot plan, foundation or basement plans, plans of all floors, elevations, grade levels, sectional wall details, and heating layout. (Not required if application is accompanied by VA CRV).

2. If advance approval of additions to or deletions from the basic house is desired, submit Schedule of Alternates FHA Form 2439. (If application is accompanied by VA CRV, circle additions or deletions on first page of master CRV).

3. Specifications on FHA Form 2005, Description of Materials, in duplicate. (Not required if application is accompanied by VA CRV).

4. If an individual water or sewerage system is proposed, submit exhibits for each individual property in duplicate. (Not required if application is accompanied by VA CRV).

Unless application is accompanied by VA CRV, when applications involving repeats of a basic house are simultaneously submitted, submit exhibits for each basic house, with copies of a master plot plan showing location and development of all individual plots, and designating the basic house or variation thereof to be built on each. Unless each plot is clearly shown with an adequate scale on a master plan, individual plot plans are required in triplicate.

EXISTING HOUSES

(Not Required if Application is Accompanied by VA CRV)

1. WITH MAJOR ADDITIONS OR ALTERATIONS PROPOSED:

(a) Complete drawings and specifications, in duplicate, indicating the work to be done and its relation to the house.

(b) Describe minor improvements and illustrate by a sketch.

2. NOT OCCUPIED FOR A FULL YEAR SINCE COMPLETION with Individual Sewerage or Water Systems, or both:

(a) Detail drawings with specifications of Sewerage System, showing cross-section of components with dimensions. If tank is prefab, indicate make, model number and commercial standard label for metal tanks.

(b) Plot Plan showing layout of system indicating distance between its components, dwelling and property lines.

(c) Current Percolation Test Data.

(d) Soil Characteristics depth of at least 6 ft. for disposal field or bed--to depth of seepage pit when pit is used.

(e) Water Table Data.--Depth at which water is met. Reading should be taken to a point beyond lateral trench or seepage pit depth.

(f) Builder's certification that sewerage system as installed complies with exhibits.

(g) If property has a well show whether well is dug or drilled, give specifications. Show on Plot Plan, location of well and distance from disposal area, from adjoining properties disposal areas or pits.

FORM ENTRIES

MORTGAGEE'S NAME, ADDRESS, ZIP CODE AND FHA NUMBER - These items should be typed or imprinted, using charge-a-plate imprint equipment. Do not use rubber imprint stamp.

Mark or insert Section of National Housing Act requested.

MONTH AND YEAR COMPLETED - Insert both where property completed less than two years. If over two years old, insert year completed only.

SUBSTAN. REHAB. Substantial rehabilitation should be indicated if the structure is substandard (dilapidated condition or lack of essential plumbing) and is to be rehabilitated with the proceeds of the loan being applied for.

DESCRIPTION - The following FHA definitions may be helpful:

Detached - A house surrounded by permanent open spaces.
Semi-detached - A house with one side a party or lot-line wall.
Row - A house with two sides party or lot-line walls.

Factory Fabricated - Where the house or several of its major components, i.e., mechanical core unit, ceiling, roof, partition walls, gables or sections thereof are purchased from a home manufacturing company.

Story - That portion of a house between a floor and the next floor or ceiling above.
First story - The lowermost story that has at least half its total floor area designed for and finished as living accommodations. Utility, storage and heating space finished in same manner as improved floor area is included. Location of first story is based upon use of space rather than location of door or finished grade.
Half story - An area finished as living accommodations located wholly or partly within the roof frame and having a floor area at least half as large as the story below. Space with less than 5 feet clear headroom shall not be considered as floor area.

Basement - The ratio of basement area to first floor area. If no basement, check predominant type of first floor construction.

Crawl Space - An unfinished accessible space below the first floor usually less than full story height.

Nonresidential Use - Total floor area devoted to nonresidential use, including accessory buildings.

Living Units - A house or portion thereof, providing complete living facilities for one family, including provisions for living, sleeping, eating, cooking and sanitation.

Habitable Rooms - The number of each type of habitable room. Exclude screened or enclosed porches and dressing rooms.

Living Room-Dining Room-Kitchen - If the dining area is in the living room, bracket or circle the words "living room and dining". If the dining area is in the kitchen, bracket or circle the words "kitchen and dining".

Baths - A bathroom contains a tub or shower, a lavatory and a water closet. A half bath contains a lavatory and a water closet. Do not enter future baths or half baths even though roughed-in, or single fixtures, such as a water closet.

Garage -
Attached - Having all or part of one or more walls common to the house or to a covered porch attached to the house.
Detached - Surrounded by open space or connected to the house by an uncovered terrace.
Built-in - Located within the exterior walls of a house.
Carport - A roofed space having at least one side open to the weather.
Storage - Space in addition to the closets and kitchen storage usually located in the garage or carport for essential storage.
Utility - Normally in the garage or carport for utility uses such as clothes washers, dryers and heating equipment.
Mineral Rights - If reserved, explain either in space shown as title exceptions or by separate page.
Heating - Use abbreviations, such as OHW/oil hot water, GFWA/gas forced warm air.
Paving - Use abbreviations such as BT/black top. CON/conorete, GR/gravel, etc.

*SPECIAL ASSESSMENTS-Show whether they are, or will be, prepayable or non-prepayable. An entry will be required when: (1) Special assessments are known to encumber the property. (2) Public work is imminent or authorized. The amount of special assessments will be estimated in this case.

LOT DIMENSIONS - Show frontage x depth and total square feet. If irregular, indicate all dimensions by standard terminology. Attach sketch of lots having more than four different dimensions. Enter total square feet. For irregular lots, estimate square footage to nearest 1000 square feet.

GENERAL LOCATION - Use local terms to indicate location; i.e., NE, SE or well known subdivision or area name.

SALE PRICE - Enter proposed sale price except where application involves an individual owner-occupant building for himself. In such cases, enter estimated cost (house plus lot). If refinancing, enter amount of outstanding indebtedness.

LEGAL DESCRIPTION - Insert legal description, if necessary, attach a separate sheet.

PROPERTY LOCATION DIAGRAM - Indicate shape of lot, location, distance from nearest intersection, and street names.

*TITLE EXCEPTIONS - Known title exceptions, such as easements and encroachments, should be shown in detail. EXCEPTIONS NOTED ON THE APPLICATION ARE CONSIDERED IN VALUE AND COVERED BY THE WAIVER IN THE FHA REGULATIONS.

*EQUIPMENT IN VALUE - Those household items and appliances which are acceptable by local law, custom and applicable FHA standards. Excluded from equipment in value are items which, by established custom, are supplied by occupant and removed when he vacates premises, as well as chattels prohibited by law from becoming realty.

LEASEHOLD CASES - *(Usually Hawaii or Maryland)*
If property involves a leasehold, insert the ground rent per year and show whether the lease is for 99 years or renewable, whether it has previously been FHA approved, and its expiration date.

APPLICATION SIGNATURES - Each application must be signed by an authorized official of the mortgagee under the Mortgagee's Certificate. In the case of an existing house, either the mortgagee, builder or seller may sign the Builder/Seller's Agreement. If proposed construction, the Builder/Seller's Agreement must be executed by the builder or seller.

(NOTE: * FOR ITEMS INDICATED, ENTER WORD "NONE" WHEN APPROPRIATE)

FHA FORM NO. 2900 R ... 1/70

REMOVE THIS SHEET - THE REVERSE MAY BE USED AS WORK SHEET

FEDERAL HOUSING ADMINISTRATION

1.

3. PROPERTY

FEDERAL HOUSING ADMINISTRATION | NO.

CONDITIONAL COMMITMENT FOR MORTGAGE INSURANCE UNDER THE NATIONAL HOUSING ACT

☐ SEC. 203(b) ☐ SEC._____

PROPERTY ADDRESS

MORTGAGEE

ESTIMATE OF VALUE AND CLOSING COSTS

VALUE OF PROPERTY $_____

Closing Costs . . . . . $_____

TOTAL *(For Mortgage Insurance Purposes)*... $_____

APPROVED FOR COMMITMENT

MONTHLY EXPENSE ESTIMATE

Fire Ins. . . . $_____

Taxes . . . . . $_____

Main. & Repairs $_____

Heat & Utilities $_____

COMMITMENT

Issued: 19

Expires: 19

COMMITMENT TERMS MAX. MORT. AMT. $_____ NO. MOS._____ MAX. INTEREST_____ %

☐ EXISTING ☐ PROPOSED

(See Gen. Cond. #3)

Improved Living Area _____ Sq. Ft.

INFORMATION

The estimates of fire insurance, taxes, maintenance/repairs, heat/utilities and closing costs are furnished for mortgagee's and mortgagor's information. They may be used to prepare FHA Form 2900. Application for Credit Approval, when a firm commitment is desired.

GENERAL COMMITMENT CONDITIONS

1. MAXIMUM MORTGAGE AMOUNT AND TERMS -

(a) **OCCUPANT MORTGAGORS:** The mortgage amount and term set forth in the heading are the maximum approved for this property assuming a satisfactory owner-occupant mortgagor. The maximum amount and term in the heading may be changed depending upon FHA's rating of the borrower, his income and credit.

(b) **NONOCCUPANT MORTGAGORS:** If the mortgagor does not occupy the house, the law limits the maximum mortgage amount to not to exceed 85% of the maximum amount available to an eligible mortgagor who will occupy the house (85% of value if Sec. 203(i) or 221). In the case of nonoccupant mortgagors, the firm commitment when issued will reduce the mortgage amount and terms below that stated in the heading.

(c) **COMMITMENT CHANGES:** The Commissioner may, upon request of the approved mortgagee, change the mortgage amount and term set forth in the heading. If the application is accompanied by a VA CRV, changes will be made only if VA issues an amendment.

2. FIRM COMMITMENT:—A firm commitment to insure a loan will be issued upon receipt of an Application for Credit Approval, FHA Form 2900, executed by an approved mortgagee and a borrower satisfactory to the Commissioner.

3. COMMITMENT TERM: This commitment shall expire **SIX MONTHS** from the issue date in the case of an EXISTING HOUSE or **ONE YEAR** from its date in the case of PROPOSED CONSTRUCTION. *(FHA classifies all cases as either "EXISTING" or "PROPOSED" for the purpose of determining when a commitment expires. Accordingly, a house, even though still under construction, may be classified as an existing house if it was not approved by FHA or VA prior to the beginning of construction.)*

4. CANCELLATION:—This commitment may be cancelled after 60 days from the date of issuance if construction has not started, unless the mortgagee has disbursed loan proceeds.

5. PROPERTY STANDARDS:—All construction, repairs, or alterations proposed in the application or on the drawings and specifications returned herewith, shall equal or exceed the FHA Minimum Property Standards, or the deviations agreed upon pursuant to purpose and scope provisions of General Revision No. 6, dated August, 1968.

SPECIFIC COMMITMENT CONDITIONS *(Applicable when checked)*

☐ 1. HEALTH AUTHORITY APPROVAL:—Execution of Form 2573 by the Health Authority indicating approval of the water supply and/or sewage disposal installation is required. (Approval by letter or Health Authority Form may be used.)

☐ 2. TERMITE CONTROL:—(a) EXISTING HOUSE - Furnish certificate from a recognized termite control operator that the house shows no evidence of an active termite infestation. (b) PROPOSED CONSTRUCTION - Furnish original and two copies of Termite Soil Treatment Guarantee FHA Form 2052.

☐ 3. SUBDIVISION REQUIREMENTS:—Comply with Requirements No._____

from Report dated _____ for _____

_____ Subdivision.

☐ 4. BUILDER'S WARRANTY:—The builder shall execute FHA Form 2544, Builder's Warranty.

5. PROPERTY INSPECTIONS:—A notice of construction status shall be given by Form 2289X, letter or telephone at the time indicated below:

(a.) ALL PROPOSED CONSTRUCTION CASES:

(1.) ☐ At least two work days before "beginning of construction."

(2.) ☐ When the building is enclosed, structural framing completely exposed and roughing-in of plumbing, heating and electrical work installed and visible

(3.) ☐ When construction completed and property ready for occupancy.

(b.) ☐ REPAIRS: Notify FHA upon completion of required repairs.

(c.) ☐ CERTIFICATE OF COMPLETION: A certificate stating that the mortgagee has examined the proposed or required repairs and that they have been satisfactorily completed will be accepted.

☐ 6. VA INSPECTIONS:—Furnish a copy of a clear VA final report.

☐ 7. ASSURANCE OF COMPLETION:—If the required repairs cannot be completed prior to submission of closing papers, a Form 2300 escrow in the amount of $ (or such additional amount as the lender desires) may be established as the means to assure completion.

8. SECTION 235 AUTHORITY:

(a) ☐ This commitment may be converted to section 235(i) upon receipt of an application covering an eligible borrower. Contract authority for this purpose has been obligated.

(b) ☐ If contract authority is available, this commitment may be converted to section 235(i) upon receipt of an application covering an eligible borrower.

☐ 9. EXPIRATION DATE:—The Total Value stated above is based on Veterans Administration Certificate of Reasonable Value, case number_____, dated_____. Regardless of General Commitment Condition Number 3, above, this commitment expires on_____.

☐ 10. See special conditions No.

_____ below or on attached sheet.

FHA FORM NO. 2800-5 Rev. 1/70 — SEND TO MORTGAGEE AFTER AUTHORIZED AGENT SIGNS

FEDERAL HOUSING ADMINISTRATION

1. | 3. PROPERTY

Form Approved
Budget Bureau No. 63-R1087

FHA MORTGAGEE NO.	U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FEDERAL HOUSING ADMINISTRATION	FHA CASE NO.

NOTICE OF ACCEPTANCE OF MORTGAGEE'S APPLICATION FOR PROPERTY APPRAISAL AND COMMITMENT FOR MORTGAGE INSURANCE UNDER THE NATIONAL HOUSING ACT

☐ SEC. 203(b) ☐ SEC._____

PROPERTY ADDRESS

MORTGAGEE

YOUR APPLICATION HAS BEEN ACCEPTED and assigned the FHA Case Number shown above. You will be billed, on a monthly statement, the applicable fee which will be identified by the FHA Case Number. Retain this notice to reconcile future statements.

DATE STAMP

FHA FORM NO. 2800-2 Rev. 1/70

RETURN TO MORTGAGEE

▲ NO.

3. NEIGHBORHOOD CODE

▲1. ☐ Core City	2. ☐ Other City	4. ☐ Sub-urban	▲1. ☐ Model City	2. ☐ Peri. of MC	4. ☐ Rural	▲1. ☐ URA	2. ☐ Code Enf.	4. ☐ Blight-ted	▲1. ☐	2. ☐	4. ☐

4. ▲ PROPERTY ADDRESS

MORTGAGE TO BE INSURED UNDER ☐ SEC. 203(b) ☐ SEC. _____ **3**

LEGAL-LOT BLK. TR./SUBD.

5. MORTGAGEE

6. ESTIMATE OF VALUE AND CLOSING COSTS

VALUE OF PROPERTY $ _____

Closing Costs . . . . . $ _____

TOTAL *(For Mortgage Insurance Purposes)* . . $ _____

7. MONTHLY EXPENSE ESTIMATE

Fire Ins. . . . $ _____

Taxes . . . . . $ _____

Main. & Repairs $ _____

Heat & Utilities $ _____

8. APPROVED FOR COMMITMENT

9. COMMITMENT

Issued: 19

Expires: 19

10. COMMITMENT TERMS MAX. MORT. AMT. $ _____ NO. MOS. _____ MAX. INTEREST _____ %

11. ☐ EXISTING ☐ PROPOSED

12. ▲ EXISTING HOUSE 4. ☐ — Name of Occupant *(or person to call if unoccupied)* — Tel. No. — Key Encl. ☐ *(If unfurnished)*

Mon. & Yr. Completed ▲ ☐ Never Occup. ☐ Vacant Occupied by ☐ Owner ☐ Tenant at $ Per Mo. ☐ Furn. ☐ Unfurn.

13. ▲ PROPOSED 1. ☐ SUBSTAN. REHAB. 2. ☐ UNDER CONSTR. 3. ☐ — Builder's Name & Address Including ZIP Code — Tel. No. — Model Identification

Plans: ☐ First Subm. Prob. Repeat Cases ☐ Yes ☐ No ☐ Prev. Proc. as FHA Case No.

14. DESCRIPTION

▲1. ☐ Detached 2. ☐ Semi-det. 3. ☐ Row

▲1. ☐ Frame 2. ☐ Masonry 3. ☐ Concrete

Factory Fabricated ▲1. ☐ Yes 2. ☐ No

▲1. ☐ Wood siding 2. ☐ Wood shingle 3. ☐ Asb. shingle 4. ☐ Fiber board 5. ☐ Brick or stone 6. ☐ Stuc. or c. blk. 7. ☐ Aluminum 8. ☐ Asph. siding 9. ☐ _____

▲ ____ Stories 7. ☐ Split Foyer 8. ☐ Bi-Level 9. ☐ Split Level

▲1. ☐ Full Basement 2. ____ % Basement 3. ☐ Slab on Gr. 4. ☐ Crawl Space

▲ Living Units

▲ ____ Bedrooms ____ Liv. room ____ Din. room ____ Kitchen ▲ ____ No. rms.

▲ ____ Baths ▲ ____ ½ Baths

% Non-res.

☐ Store Rm ☐ Util. Rm.

▲1. ☐ Garage 9. ☐ Carport ▲ No cars

▲1. ☐ Built-in 2. ☐ Attached 3. ☐ Detached

Mineral Rights Reserved ☐ No ☐ Yes *(Explain)*

Utilities: Public / Comm. / Individual

Water ▲1. ☐ 2. ☐ 3. ☐

Gas ☐ ☐ ☐

Elect. ☐ ☐ ☐

▲1. ☐ Underground Wiring

Sanitary: Sewer ▲1. ☐ 2. ☐ 3. ☐ 4. ☐ — Sept. tank ☐ Cess Pool ☐

▲ Type of Heating

▲1. ☐ Cent. Air Cond. 2. ☐ Wall Air Cond.

Type of Paving (Str.) ☐ None

☐ Curb & Gutter ☐ Sidewalk ☐ Storm Sewer

EXTRA FEATURES

▲1. ☐ Fireplace 2. ☐ Rec. Room 4. ☐ Sw. Pool

▲1. ☐ Extra Fire Pl. 2. ☐ Expand Attic 4. ☐ Fin. Attic

▲1. ☐ Enclosed Porch 2. ☐ Breezeway 4. ☐ Fence

▲1. ☐ 2. ☐ 4. ☐

15. SPEC. ASSESS. Prepayable $ _____ Non-Prepay. $ _____

Int. ____ % Ann. Pay. $ _____ Unpd. Bal. $ _____ Rem. Term ____ Yrs.

16. ▲ LOT _____ × _____ 1. ☐ Irr. 2. ☐ Acres _____ Sq. Ft.

17. GENERAL LOCATION:

18. ANN. R.EST. TAXES $

19. ANN. FIRE INS $

20. ▲ SALE PRICE $ — $ — Mo. — Yr.

21. EQUIPMENT IN VALUE: ▲1. ☐ Range or Counter cook unit & oven 2. ☐ Refrig. 4. ☐ Dishwasher

▲1. ☐ Auto. washer 2. ☐ Dryer 4. ☐ — ▲1. ☐ Garb. Disp. 2. ☐ Vent. fan 4. ☐ Carpet

22. ▲ LOC. CODE

23. BASIC CASE

24. SUB FILE NO.

25. REM. LIFE ☐ ECON. ☐ PHYS. YRS.

26. CONDITION AS APPRAISED ▲1. ☐ Excellent 2. ☐ Good 3. ☐ Fair 4. ☐ Poor

27. NEIGHBORHOOD DATA

Pres. Land Use _____

Anticip. Land Use _____

Owner Occp. Appeal _____

Demand for Amenity Inc. Prop. _____

____ % Blt. up ____ % own. ____ % Ten. ____ % Vac.

Age Typ. Bldg. _____ to _____

Typ. Mo. Rent $ _____ to $ _____

▲ Price Range $ _____ to $ _____

28. ▲ Location ☐ Acceptable ☐ Reject ☐ 223e

Property ☐ Acceptable ☐ Reject

29. IMPROVED

▲ LIVING AREA _____ Sq. Ft.

30. COST DATA: 2800-3 for _____ ☐ Integ.

2014-d ☐ 2014

Cost @ $ _____ Per Sq. Ft. = $ _____

31. BLDG. DESC/VARS.

	−	+
Fdns. _____ Frpl. _____		
Ext. Wall _____		
Shtg. _____		
Sub. Fl. _____ Fin. Fl. _____		
Rfg. _____ Int. Wall _____		
Plg. _____		
Htg. _____ Insul. _____		
Equip. _____		
Total Variations $		

Net variations . . . . . $ _____

Basic cost . . . . . $ _____

Main Bldg. *(Subtotal)* . . . $ _____

~~Gar./Carport . . . . . $ _____~~

Porches/Terraces . . . . . $ _____

Walks/Drives . . . . . $ _____

Ldsp./Pltg./Fin. Gr. . . . . $ _____

Other on-site imp. . . . . $ _____

On-site imp. unadj. *(Total)* $ _____

2511 Comb. ____ % × wkmp. ____ % = ____ %

On-site imp. adj. . . . . $ _____

Arch. services . . . . . $ _____

Water/sewer tap charges . . $ _____

EST. REPL. COST IMP. . $ _____

32. REPL. COST — Review

▲ Repl. cost imp. $ _____

▲ Mkt. Price Eq. site $ _____

Misc. Allow Costs $ _____

Mktg. Expense . . $ _____

▲ Repl. Cost . . . . $ _____

33. COST OF REPAIRS/IMPROVEMENT Prop. $ — Req. $

34. COMPARABLE PROPERTIES	Sq. Ft. Imp. Area	Stories	Rms.	Bed Rms.	Bath	Const.	Gar.	Yr. / cond.	Price	Date	$ / L	Date Inspec.	− / +	Variations
SUBJECT PROPERTY														
(1)														
(2)														
(3)														

35. CAP. INCOME: Mon. Rent $ — Excess exp. $ = $ × Rent multiplier of = CAP. INCOME $

36. APPRAISAL SUMMARY: Capitalized Income $ _____ Cost $ _____ Market ▲ $ _____

VALUE: Val. *(Excl. Cl. Costs)* $ _____ Closing Costs $ _____ Total ▲ $ _____

37. LEASE: ANN. GRD. RENT $ CAP. AT % = ▲ $ Val. of Leased Fee. Val. of Leasehold Est. $

38. (1) Remarks (2) Spec. Cond. (3) Rej. Reasons (4) Neigh. Charac. (5) Land excl. From Val. (6) Items Excl. From Repl. Cost.

39. INSPECTIONS: ☐ Repair ☐ Proposed Construction ☐ Mortgagee's Certificate

☐ Appr. Arch. Proc. Date

☐ Reject

Review

☐ Commit. Staff Val. ☐ Other

☐ Reject

Review Date

WARNING: All persons by signing this report certify that they have no interest present or future, in the property, application or mortgage.

FHA FORM NO. 2800-3 Rev. 1/70 NOTE TO PROCESSOR: INSERT CARBON BEFORE COMPLETION OF ITEMS 24 THRU 39. FHA COPY-FILE IN CASE BINDER

FEDERAL HOUSING ADMINISTRATION ▲

1. SPECIAL PROCESSING ▲ — 2. PROPERTY

DATA PAGE ▲ NO.

3. NEIGHBORHOOD CODE

▲1. ☐ Core City | 2. ☐ Other City | 4. ☐ Sub-urban | ▲1. ☐ Model City | 2. ☐ Peri. of MC | 4. ☐ Rural | ▲1. ☐ URA | 2. ☐ Code Enf. | 4. ☐ Blight-ed | ▲1. ☐ | 2. ☐ | 4. ☐

MORTGAGE TO BE INSURED UNDER ☐ SEC. 203(b) ☐ SEC. _____

3

4. ▲ PROPERTY ADDRESS

LEGAL-LOT BLK. TR./SUBD.

5. MORTGAGEE

6. ESTIMATE OF VALUE AND CLOSING COSTS

VALUE OF PROPERTY $ _____

Closing Costs . . . . . $ _____

TOTAL *(For Mortgage Insurance Purposes)* . . $ _____

7. MONTHLY EXPENSE ESTIMATE

Fire Ins. . . . $ _____

Taxes . . . . . $ _____

Main. & Repairs $ _____

Heat & Utilities $ _____

8. APPROVED FOR COMMITMENT

9. COMMITMENT

Issued: 19

Expires: 19

10. COMMITMENT TERMS MAX. MORT. AMT. $ _____ NO. MOS. _____ MAX. INTEREST _____ %

11. ☐ EXISTING ☐ PROPOSED

12. ▲ EXISTING HOUSE 4. ☐

Name of Occupant *(or person to call if unoccupied)* | Tel. No. | Key Encl. ☐ *(If unfurnished)*

Mon. & Yr. Completed ▲ ☐ Never Occup. ☐ Vacant Occupied by ☐ Owner ☐ Tenant at $ Per Mo. ☐ Furn. ☐ Unfurn.

13. ▲ PROPOSED 1. ☐ SUBSTAN. REHAB. 2. ☐ UNDER CONSTR. 3. ☐

Builder's Name & Address Including ZIP Code | Tel. No. | Model Identification

Plans: ☐ First Subm. Prob. Repeat Cases ☐ Yes ☐ No ☐ Prev. Proc. as FHA Case No.

14. DESCRIPTION

▲1. ☐ Detached 2. ☐ Semi-det. 3. ☐ Row

▲1. ☐ Frame 2. ☐ Masonry 3. ☐ Concrete

Factory Fabricated ▲1. ☐ Yes 2. ☐ No

▲1. ☐ Wood siding 2. ☐ Wood shingle 3. ☐ Asb. shingle 4. ☐ Fiber board 5. ☐ Brick or stone 6. ☐ Stuc. or c. blk. 7. ☐ Aluminum 8. ☐ Asph. siding 9. ☐ _____

▲ ____ Stories 7. ☐ Split Foyer 8. ☐ Bi-Level 9. ☐ Split Level

▲1. ☐ Full Basement 2. ____% Basement 3. ☐ Slab on Gr. 4. ☐ Crawl Space

▲ Living Units

▲ ____ Bedrooms

____ Liv. room

____ Din. room

____ Kitchen

▲ ____ No. rms.

▲ ____ Baths

▲ ____ ½ Baths

% Non-res.

☐ Store Rm ☐ Util. Rm.

▲1. ☐ Garage 9. ☐ Carport ▲ No cars

▲1. ☐ Built-in 2. ☐ Attached 3. ☐ Detached

Mineral Rights Reserved ☐ No ☐ Yes *(Explain)*

Utilities: Public Comm. Individual

Water ▲1. ☐ 2. ☐ 3. ☐

Gas ☐ ☐ ☐

Elect. ☐ ☐ ☐

▲1. ☐ Underground Wiring

Sanitary: Sept. tank Cess Pool

Sewer ▲1. ☐ 2. ☐ 3. ☐ 4. ☐

▲ Type of Heating

▲1. ☐ Cent. Air Cond. 2. ☐ Wall Air Cond.

Type of Paving (Str.) ☐ None

☐ Curb & Gutter ☐ Sidewalk ☐ Storm Sewer

EXTRA FEATURES

▲1. ☐ Fireplace 2. ☐ Rec. Room 4. ☐ Sw. Pool

▲1. ☐ Extra Fire Pl. 2. ☐ Expand Attic 4. ☐ Fin. Attic

▲1. ☐ Enclosed Porch 2. ☐ Breezeway 4. ☐ Fence

▲1. ☐ 2. ☐ 4. ☐

15. SPEC. ASSESS. Prepayable $ _____ Non-Prepay. $ _____

Int. ____% Ann. Pay. $ _____ Unpd. Bal. $ _____ Rem. Term ____ Yrs.

16. ▲ LOT _____ × _____ 1. ☐ Irr. 2. ☐ Acres _____ Sq. Ft.

17. GENERAL LOCATION:

18. ANN. R.EST. TAXES $

19. ANN. FIRE INS $

20. ▲ SALE PRICE $ | $ | Mo. | Yr.

21. EQUIPMENT IN VALUE:

▲1. ☐ Range or Counter cook unit & oven 2. ☐ Refrig. 4. ☐ Dishwasher

▲1. ☐ Auto. washer 2. ☐ Dryer 4. ☐

▲1. ☐ Garb. Disp. 2. ☐ Vent. fan 4. ☐ Carpet

22. ▲ LOC. CODE

23. BASIC CASE

24. SUB FILE NO.

25. REM. LIFE ☐ ECON. ☐ PHYS. YRS.

26. CONDITION AS APPRAISED ▲1. ☐ Excellent 2. ☐ Good 3. ☐ Fair 4. ☐ Poor

27. NEIGHBORHOOD DATA

Pres. Land Use _____

Anticip. Land Use _____

Owner Occp. Appeal _____

Demand for Amenity Inc. Prop. _____

____% Blt. up ____% own. ____% Ten. ____% Vac.

Age Typ. Bldg. _____ to _____

Typ. Mo. Rent $ _____ to $ _____

▲ Price Range $ _____ to $ _____

28. ▲ Location ☐ Acceptable ☐ Reject ☐ 223e

Property ☐ Acceptable ☐ Reject

29. IMPROVED

▲ LIVING AREA _____ Sq. Ft.

30. COST DATA: 2800-3 for _____ ☐ Integ.

2014-d _____ ☐ 2014

Cost @ $ _____ Per Sq. Ft. = $ _____

31. BLDG. DESC/VARS.

	−	+
Fdns. _____ Frpl. _____		
Ext. Wall _____		
Shtg. _____		
Sub. Fl. _____ Fin. Fl. _____		
Rfg. _____ Int. Wall _____		
Plg. _____		
Htg. _____ Insul. _____		
Equip. _____		
Total Variations $		

Net variations . . . . . $ _____

Basic cost . . . . . $ _____

Main Bldg. *(Subtotal)* . . . $ _____

Gar./Carport . . . . . $ _____

Porches/Terraces . . . . . $ _____

Walks/Drives . . . . . $ _____

Ldsp./Pltg./Fin. Gr. . . . . $ _____

Other on-site imp. . . . . $ _____

On-site imp. unadj. *(Total)* $ _____

2511 Comb. _____% × wkmp. ____% = ____%

On-site imp. adj. . . . . $ _____

Arch. services . . . . . $ _____

Water/sewer tap charges . . $ _____

EST. REPL. COST IMP. . $ _____

32. REPL. COST — Review

▲ Repl. cost imp. $ _____

▲ Mkt. Price Eq. site $ _____

Misc. Allow Costs $ _____

Mktg. Expense . . $ _____

▲ Repl. Cost . . . . $ _____

33. COST OF REPAIRS/IMPROVEMENT

Prop. $ Req. $

34. COMPARABLE PROPERTIES

	Sq. Ft. Imp. Area	Stories	Rms.	Bed Rms.	Bath	Const.	Gar.	Yr. / cond.	Price	Date	S / L	Date Inspec.	− / + / =	Variations
SUBJECT PROPERTY														
(1)														
(2)														
(3)														

35. CAP. INCOME: Mon. Rent $ — Excess exp. $ = $ × Rent multiplier of = CAP. INCOME $

36. APPRAISAL SUMMARY: Capitalized Income $ _____ Cost $ _____ Market ▲ $ _____

VALUE: Val. *(Excl. Cl. Costs)* $ _____ Closing Costs $ _____ Total ▲ $ _____

37. LEASE: ANN. GRD. RENT $ CAP. AT % = ▲ $ Val. of Leased Fee. Val. of Leasehold Est. $

38. (1) Remarks (2) Spec. Cond. (3) Rej. Reasons (4) Neigh. Charac. (5) Land excl. From Val. (6) Items Excl. From Repl. Cost.

39. INSPECTIONS: ☐ Repair ☐ Proposed Construction ☐ Mortgagee's Certificate

☐ Appr. Arch. Proc. Date

☐ Reject

Review

☐ Commit. Staff Val. ☐ Other

☐ Reject

Review Date

WARNING: All persons by signing this report certify that they have no interest present or future, in the property, application or mortgage.

FHA FORM NO. 2800-4 Rev 1/70 FHA COPY - SEND TO RESEARCH & STATISTICS DIVISION AFTER INSURANCE ENDORSEMENT

FEDERAL HOUSING ADMINISTRATION

☐ SEC. 203(b) ☐ SEC. _____

MORTGAGEE Name and Address including ZIP Code *(Please Type)*
(Please locate address within corner marks)

Telephone No.

This form is a request for an appraisal and a commitment to insure a loan on an individual property.

We cannot process incomplete applications.
Rejecting them is costly.
Please help by giving us well prepared applications.
Keep all entries within alloted spaces.

EXISTING HOUSE ☐	Name of Occupant *(or person to call if unoccupied)*	Tel. No.	Key Encl. ☐ *(If unfurnished)*
	Mon. & Yr. Completed ☐Never Occup. ☐Vacant Occupied by ☐Owner ☐Tenant at $ Per Mo. ☐ Furn. ☐ Unfurn		
PROPOSED ☐ SUBSTAN. REHAB. ☐ UNDER CONSTR. ☐	Builder's Name & Address Including ZIP Code	Tel. No.	Model Identification
	Plans: ☐ First Subm. Prob. Repeat Cases ☐ Yes ☐ No ☐ Prev. Proc. as FHA Case No.		

DESCRIPTION						
☐ Detached ☐ Semi-det. ☐ Row	☐ Wood siding ☐ Wood shingle ☐ Asb. shingle ☐ Fiber board	____ Stories ☐ Split Foyer ☐ Bi-Level ☐ Split Level	____ Bedrooms ____ Liv. room ____ Din. room ____ Kitchen ____ No. rms.	☐ Store Rm ☐ Util. Rm.	Mineral Rights Reserved ☐ No ☐ Yes *(Explain)*	Type of Heating
☐ Frame ☐ Masonry ☐ Concrete	☐ Brick or stone ☐ Stuc. or c. blk. ☐ Aluminum	☐ Full Basement ____% Basement ☐ Slab on Gr. ☐ Crawl Space	____ Baths ____ ½ Baths	☐ Garage ☐ Carport No cars ☐ Built-in ☐ Attached ☐ Detached	Utilities: Public Comm. Individual Water ☐ ☐ ☐ Gas ☐ ☐ ☐ Elect. ☐ ☐ ☐ ☐ Underground Wiring Sanitary: Sept. tank Cess Pool Sewer ☐ ☐ ☐ ☐	☐ Cent, Air Con ☐ Wall Air Con Type of Paving (St ☐ None ☐ Curb & Gutte ☐ Sidewalk ☐ Storm Sewer
Factory Fabricated ☐ Yes 2. ☐ No	☐ Asph. siding ☐ _____	Living Units	% Non-res.			
EXTRA FEATURES	☐ Fireplace ☐ Extra Fire Pl.	☐ Rec. Room ☐ Expand Attic	☐ Sw. Pool ☐ Fin. Attic	☐ Enclosed Porch ☐	☐ Breezeway ☐	☐ Fence ☐

SPEC. ASSESS. Prepayable $_____ Non-Prepay. $_____
Int.____% Ann. Pay. $_____ Unpd.Bal. $_____ Rem.Term____Yrs.

LOT_____ X _____ ☐ Irr. ☐ Acres_____ Sq.Ft

ANN.R.EST.TAXES $ | ANN.FIRE INS $ | GENERAL LOCATION: | SALE PRICE $

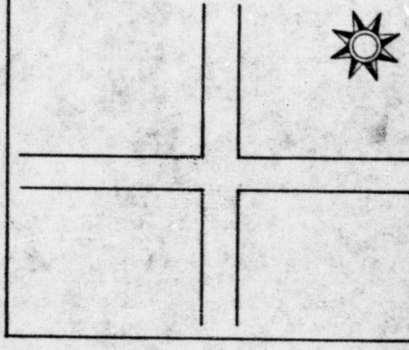
EQUAL OPPORTUNITY IN HOUSING

Federal laws and regulations prohibit discrimination because of race, color, religion, or national origin in the sale or rental of residential property. Numerous state statutes and local ordinances also prohibit such discrimination. In addition, section 805 of the Civil Rights Act of 1968 prohibits discriminatory practices in connection with the financing of housing.

If FHA finds there is noncompliance with any applicable antidiscrimination laws or regulations, it may discontinue FHA business with the violator.

LEGAL DESCRIPTION *(Attach one page if necessary)*

SHOW BELOW: Shape, location, distance from nearest intersection and street names. Mark N at NORTH point.



Please consider the following TITLE EXCEPTIONS in value:

Please consider the following Equipment in value:

LEASEHOLD Ground Rent *(Per Yr)* $ Lease is: ☐ 99 years ☐ Renewable ☐ FHA Approved Expires

BUILDER/SELLER'S AGREEMENT: All Houses: The undersigned agrees to deliver to the purchaser FHA's statement of appraised value. Proposed Construction: The undersigned agrees, upon sale or conveyance of title within one year from date of initial occupancy, to deliver to the purchaser FHA Form 2544, warranting that the house is constructed in substantial conformity with the plans and specifications on which FHA based its value and to furnish FHA a conformed copy with the purchaser's receipt thereon that the original warranty was delivered to him. All Houses: In consideration of the issuance of the commitment requested by this application, I(we) hereby agree that any deposit or downpayment made in connection with the purchase of the property described above, whether received by the undersigned or an agent of the undersigned, shall upon receipt be deposited in escrow or in trust or in a special account which is not subject to the claims of my creditors and where it will be maintained until it has been disbursed for the benefit of the purchaser or otherwise disposed of in accordance with the terms of the contract of sale.

Signature: ☐ Mortgagee ☐ Builder ☐ Seller ☐ Other 19

MORTGAGEE'S CERTIFICATE: The undersigned mortgagee certifies that to the best of its knowledge all statements made in this application and the supporting documents are true, correct and complete.

Signature/Title of Mortgagee Officer: 19

WARNING: Section 1010 of Title 18, U.S.C., provides: "Whoever, for the purpose of . . . influencing such Administration . . . makes, passes, utters, or publishes any statement, knowing the same to be false . . . shall be fined not more than $5,000 or imprisoned not more than two years, or both."

FHA FORM NO. 2800-1 REV. 1/70

MORTGAGEE - AFTER COMPLETING THE FORM DETACH THIS SHEET. SEND REST OF FORM TO FHA OFFICE

FEDERAL HOUSING ADMINISTRATION

FEDERAL HOUSING ADMINISTRATION | CASE NO.

MORTGAGEE'S APPLICATION FOR PROPERTY APPRAISAL AND COMMITMENT FOR MORTGAGE INSURANCE UNDER THE NATIONAL HOUSING ACT

☐ SEC. 203(b) ☐ SEC._____

PROPERTY ADDRESS

MORTGAGEE Name and Address including ZIP Code *(Please Type)*
(Please locate address within corner marks)

Telephone No.

This form is a request for an appraisal and a commitment to insure a loan on an individual property.

We cannot process incomplete applications.
Rejecting them is costly.
Please help by giving us well prepared applications.
Keep all entries within alloted spaces.

EXISTING HOUSE ☐ — Name of Occupant *(or person to call if unoccupied)* | Tel. No. | Key Encl. ☐ *(If unfurnished)*

Mon. & Yr. Completed | ☐Never Occup. ☐Vacant | Occupied by ☐Owner ☐Tenant at $ Per Mo. ☐Furn. ☐Unfurn.

PROPOSED ☐ SUBSTAN. REHAB. ☐ UNDER CONSTR. ☐ — Builder's Name & Address Including ZIP Code | Tel. No. | Model Identification

Plans: ☐ First Subm. Prob. Repeat Cases ☐Yes ☐No ☐ Prev. Proc. as FHA Case No.

DESCRIPTION					Mineral Rights Reserved	Type of Heating
☐ Detached ☐ Semi-det. ☐ Row	☐ Wood siding ☐ Wood shingle ☐ Asb. shingle ☐ Fiber board	____ Stories ☐ Split Foyer ☐ Bi-Level ☐ Split Level	____ Bedrooms ____ Liv. room ____ Din. room ____ Kitchen	☐ Store Rm ☐ Util. Rm. ☐ Garage ☐ Carport	☐No ☐Yes *(Explain)*	☐Cent.Air Cond. ☐Wall Air Cond.
☐ Frame ☐ Masonry ☐ Concrete	☐ Brick or stone ☐ Stuc. or c. blk. ☐ Aluminum	☐ Full Basement ___% Basement ☐ Slab on Gr.	____ No. rms. ____ Baths ____ ½ Baths	No cars ☐ Built-in ☐ Attached	Utilities: Public Comm. Individual Water ☐ ☐ ☐ Gas ☐ ☐ ☐ Elect. ☐ ☐ ☐ ☐ Underground Wiring	Type of Paving (Str.) ☐None
Factory Fabricated ☐ Yes 2. ☐ No	☐ Asph. siding ☐ _____	☐ Crawl Space Living Units	% Non-res.	☐ Detached	Sanitary: Sept. tank Cess Pool Sewer ☐ ☐ ☐ ☐	☐Curb & Gutter ☐Sidewalk ☐Storm Sewer
EXTRA FEATURES	☐Fireplace ☐Extra Fire Pl.	☐Rec. Room ☐Expand Attic	☐Sw. Pool ☐Fin. Attic	☐ Enclosed Porch	☐ Breezeway	☐Fence

SPEC. ASSESS. Prepayable $_____ Non-Prepay. $_____
Int.___% Ann. Pay. $_____ Unpd.Bal. $_____ Rem.Term___Yrs.

LOT_____X_____ ☐Irr. ☐Acres_____ Sq.Ft.

GENERAL LOCATION:

ANN.R.EST.TAXES $ | ANN.FIRE INS $ | SALE PRICE $

EQUAL OPPORTUNITY IN HOUSING

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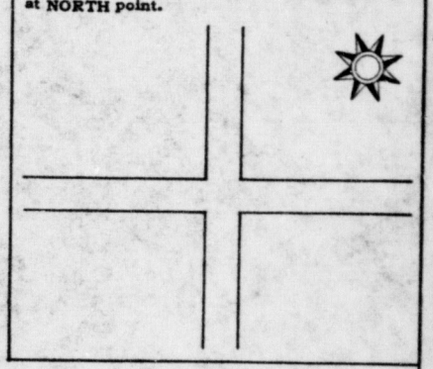

Please consider the following TITLE EXCEPTIONS in value:

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Signature: ☐ Mortgagee ☐ Builder ☐ Seller ☐ Other

19

MORTGAGEE'S CERTIFICATE: The undersigned mortgagee certifies that to the best of its knowledge all statements made in this application and the supporting documents are true, correct and complete.

Signature/Title of Mortgagee Officer

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FHA FORM NO. 2800-1 REV. 1/70

FHA COPY-FILE IN CASE BINDER

FEDERAL HOUSING ADMINISTRATION

NO.

CONDITIONAL COMMITMENT FOR MORTGAGE INSURANCE UNDER THE NATIONAL HOUSING ACT

☐ SEC. 203(b) ☐ SEC._____

PROPERTY ADDRESS

MORTGAGEE

ESTIMATE OF VALUE AND CLOSING COSTS

VALUE OF PROPERTY $_____

Closing Costs . . . . . $_____

TOTAL *(For Mortgage Insurance Purposes)*. . . $_____

APPROVED FOR COMMITMENT

MONTHLY EXPENSE ESTIMATE

Fire Ins. . . . $_____

Taxes . . . . . $_____

Main. & Repairs $_____

Heat & Utilities $_____

COMMITMENT

Issued: 19

Expires: 19

COMMITMENT TERMS MAX. MORT. AMT. $_____ NO. MOS._____ MAX. INTEREST_____%

☐ EXISTING ☐ PROPOSED

(See Gen. Cond. #3)

Improved Living Area _____ Sq. Ft.

INFORMATION

The estimates of fire insurance, taxes, maintenance/repairs, heat/utilities and closing costs are furnished for mortgagee's and mortgagor's information. They may be used to prepare FHA Form 2900. Application for Credit Approval, when a firm commitment is desired.

GENERAL COMMITMENT CONDITIONS

1. MAXIMUM MORTGAGE AMOUNT AND TERMS -

(a) **OCCUPANT MORTGAGORS:** The mortgage amount and term set forth in the heading are the maximum approved for this property assuming a satisfactory owner-occupant mortgagor. The maximum amount and term in the heading may be changed depending upon FHA's rating of the borrower, his income and credit.

(b) **NONOCCUPANT MORTGAGORS:** If the mortgagor does not occupy the house, the law limits the maximum mortgage amount to not to exceed 85% of the maximum amount available to an eligible mortgagor who will occupy the house (85% of value if Sec. 203(i) or 221). In the case of nonoccupant mortgagors, the firm commitment when issued will reduce the mortgage amount and terms below that stated in the heading.

(c) **COMMITMENT CHANGES:** The Commissioner may, upon request of the approved mortgagee, change the mortgage amount and term set forth in the heading. If the application is accompanied by a VA CRV, changes will be made only if VA issues an amendment.

2. FIRM COMMITMENT:—A firm commitment to insure a loan will be issued upon receipt of an Application for Credit Approval, FHA Form 2900, executed by an approved mortgagee and a borrower satisfactory to the Commissioner,

3. COMMITMENT TERM: This commitment shall expire **SIX MONTHS** from the issue date in the case of an EXISTING HOUSE or **ONE YEAR** from its date in the case of PROPOSED CONSTRUCTION. *(FHA classifies all cases as either "EXISTING" or "PROPOSED" for the purpose of determining when a commitment expires. Accordingly, a house, even though still under construction, may be classified as an existing house if it was not approved by FHA or VA prior to the beginning of construction.)*

4. CANCELLATION:—This commitment may be cancelled after 60 days from the date of issuance if construction has not started, unless the mortgagee has disbursed loan proceeds.

5. PROPERTY STANDARDS:—All construction, repairs, or alterations proposed in the application or on the drawings and specifications returned herewith, shall equal or exceed the FHA Minimum Property Standards, or the deviations agreed upon pursuant to purpose and scope provisions of General Revision No. 6, dated August, 1968.

SPECIFIC COMMITMENT CONDITIONS *(Applicable when checked)*

☐ 1. HEALTH AUTHORITY APPROVAL:—Execution of Form 2573 by the Health Authority indicating approval of the water supply and/or sewage disposal installation is required. (Approval by letter or Health Authority Form may be used.)

☐ 2. TERMITE CONTROL:—(a) EXISTING HOUSE - Furnish certificate from a recognized termite control operator that the house shows no evidence of an active termite infestation. (b) PROPOSED CONSTRUCTION - Furnish original and two copies of Termite Soil Treatment Guarantee FHA Form 2052.

☐ 3. SUBDIVISION REQUIREMENTS:—Comply with Requirements No._____ from Report dated _____ for _____ Subdivision.

☐ 4. BUILDER'S WARRANTY:—The builder shall execute FHA Form 2544, Builder's Warranty.

5. PROPERTY INSPECTIONS:—A notice of construction status shall be given by Form 2289X, letter or telephone at the time indicated below:

(a.) ALL PROPOSED CONSTRUCTION CASES:

(1.) ☐ At least two work days before "beginning of construction."

(2.) ☐ When the building is enclosed, structural framing completely exposed and roughing-in of plumbing, heating and electrical work installed and visible

(3.) ☐ When construction completed and property ready for occupancy.

(b.) ☐ REPAIRS: Notify FHA upon completion of required repairs.

(c.) ☐ CERTIFICATE OF COMPLETION: A certificate stating that the mortgagee has examined the proposed or required repairs and that they have been satisfactorily completed will be accepted.

☐ 6. VA INSPECTIONS:—Furnish a copy of a clear VA final report.

☐ 7. ASSURANCE OF COMPLETION:—If the required repairs cannot be completed prior to submission of closing papers, a Form 2300 escrow in the amount of $ (or such additional amount as the lender desires) may be established as the means to assure completion.

8. SECTION 235 AUTHORITY:

(a) ☐ This commitment may be converted to section 235(i) upon receipt of an application covering an eligible borrower. Contract authority for this purpose has been obligated.

(b) ☐ If contract authority is available, this commitment may be converted to section 235(i) upon receipt of an application covering an eligible borrower.

☐ 9. EXPIRATION DATE:—The Total Value stated above is based on Veterans Administration Certificate of Reasonable Value, case number_____, dated_____. Regardless of General Commitment Condition Number 3, above, this commitment expires on_____.

☐ 10. See special conditions No._____ below or on attached sheet.

FEDERAL HOUSING ADMINISTRATION	NO.

STATEMENT OF APPRAISED VALUE FOR A MORTGAGE TO BE INSURED UNDER THE NATIONAL HOUSING ACT

☐ SEC. 203(b) ☐ SEC._____

PROPERTY ADDRESS

MORTGAGEE

ESTIMATE OF VALUE AND CLOSING COSTS

VALUE OF PROPERTY $_____

Closing Costs . . . . . $_____

TOTAL *(For Mortgage Insurance Purposes)* . . $_____

APPROVED FOR COMMITMENT

MONTHLY EXPENSE ESTIMATE

Fire Ins. . . . $_____

Taxes . . . . . $_____

Main. & Repairs $_____

Heat & Utilities $_____

COMMITMENT

Issued: 19

Expires: 19

DEFINITION OF VALUE

The Federal Housing Commissioner has valued the above identified property for mortgage insurance purposes in the amount shown. FHA's estimate of "Value" ("Replacement Cost" in Section 213 or 220) does not fix a sales price, except when the mortgage is to be insured under section 235(j); does not indicate FHA approval of a purchaser of the property; nor does it indicate the amount of an insured mortgage that would be approved.

THE ESTIMATE OF VALUE AND CLOSING COSTS ABOVE HAS THREE PARTS:

"VALUE OF PROPERTY" IS FHA'S ESTIMATE OF THE VALUE OF THE PROPERTY.

"Closing Costs" is the FHA estimate of the cost of closing a mortgage loan on the property. These costs may be paid by either the buyer or the seller.

"Total for Mortgage Insurance Purposes" includes both the value of the property and estimated closing costs. The maximum mortgage which FHA can insure is based on this amount. Under those sections of the National Housing Act (such as 213 or 220) where the maximum mortgage amount must be based on estimated replacement cost, the "Value of Property shall be deemed to mean replacement cost for mortgage insurance purposes"

"Replacement Cost" is an estimate of the current cost to reproduce the property including land, labor, site survey and marketing expense but excluding payments for prepaid expenses such as taxes and insurance and closing costs.

If the contract price of the property is equal to or less than "Value of Property", and the buyer pays closing costs, a part of the closing costs can be included in the mortgage. IF THE CONTRACT PRICE OF THE PROPERTY IS MORE THAN "VALUE OF PROPERTY" AND THE BUYER PAYS THE CLOSING COSTS, THE BUYER IS PAYING MORE FOR THE PROPERTY THAN FHA'S ESTIMATE OF ITS VALUE.

The law requires that FHA mortgagors receive a statement of "appraised value" prior to the sale of the property. If the sales contract has been signed before the mortgagor receives such a statement, the contract must contain, or must be amended to include, the following language;

> "It is...agreed that,....the purchaser shall not be obligated to complete the purchase...or to incur any penalty...unless the seller has delivered to the purchaser a written statement setting forth...the value of the property (excluding closing costs) not less than $. The purchaser shall have the privilege...of proceeding with...this contract without regard to the amount of the...valuation."

ADVICE TO HOME BUYERS

ADVANCE PAYMENTS - Make extra payments when able. You pay less interest and have your home paid for sooner. Notify the lender in writing at least 30 days before the regular payment date on which you intend to make an advance payment.

DELINQUENT PAYMENTS- Monthly payments are due the first day of each month and should be made on or before that date. The lender may make a late charge up to 2 cents for each dollar of any payment more than 15 days late. If you fail for 30 days to make a payment, or to perform any other agreement in the mortgage, your lender may foreclose. You could lose your home, damage your credit, and prevent your obtaining further mortgage loans. If extraordinary circumstances prevent your making payments on time, see your lender at once. If you are temporarily unable to make your payments because of illness, loss of job, etc., your lender may be able to help you. Ask your lender to explain FHA's forbearance policy. **YOUR CREDIT IS AN IMPORTANT ASSET; DON'T LOSE IT THROUGH NEGLECT.**

ADJUSTED PREMIUM CHARGE - If you make extra payments in any year of more than 15% of the original mortgage amount, you may have to pay an adjusted premium charge. This charge is 1% of the original mortgage. FHA is authorized to charge a premium of not less than ¼ of 1% nor more than 1% per year, but has set the premium at ½ of 1% assuming it will be paid over the whole mortgage term. When a mortgage is paid off in advance, the premiums collected do not cover FHA cost and an adjusted premium is charged to offset the loss. If this charge were not made, the premium would have to be higher. An adjusted premium is not made if a new FHA mortgage is placed on the property, or if the FHA insurance is in force for 10 years or longer.

TAXES, ASSESSMENTS, AND INSURANCE - Send your lender bills for taxes, special assessments, or fire insurance that come to you. The fire insurance the lender requires you to carry usually covers only the balance of the loan. Check this with your lender. You may wish to take out additional insurance so that if the house is damaged your loss will be covered as well as the lender's. If your home is damaged by fire, windstorm, or other cause, write your lender at once. Taxes for the coming year can't be known until the bills are received. If they exceed the amount accumulated from your payments, you will be asked to pay the difference. If they are less, the difference will be credited to your account. The same is true of fire insurance. Some States allow homestead or veteran's tax exemptions. Apply for any exemption to which you may be entitled. When it is approved, notify your lender.

CLOSING COSTS - In the heading is FHA's estimate of anticipated closing costs, such as fees for preparation of mortgage instruments, attorneys' fees, title insurance, origination fees and documentary stamp taxes. The estimate does not include charges for such prepayable items as taxes, fire insurance.

BUILDER'S WARRANTY- When FHA approves plans and specifications before construction, the builder is required to warrant that the house conforms to FHA approved plans. This warranty is for 1 year following the date on which title is conveyed to the original buyer or the date on which the house was first occupied, whichever occurs first.

If during the warranty period you notice defects for which you believe the builder is responsible, ask him in writing to correct them . If he fails to do so, notify the FHA insuring office in writing. Mention the FHA case number shown in the heading. If inspection shows the builder to be at fault, the FHA will try to persuade him to make correction. If he does not, you may seek legal relief under the builder's warranty. Most builders take pride in their work and will make justifiable corrections. They cannot be expected to correct damage caused by ordinary wear and tear or by poor maintenance. Keeping the house in good condition is the owner's responsibility.

OPERATING EXPENSES- In the heading are FHA estimates of monthly costs of taxes, heat and utilities, fire insurance, maintenance and repairs. The estimated figures will probably have to be adjusted when you receive the actual bills. **BEAR IN MIND THAT IN MOST COMMUNITIES TAXES AND OTHER OPERATING COSTS ARE INCREASING.** The estimates should give some idea of what you can expect the costs to be at the beginning. In some areas FHA's estimate of taxes may also include local charges such as sewer charges, garbage collection fees, water rates, etc.

IF YOU SELL - If you sell while the mortgage exists, the buyer may finance several ways. Understand how these arrangements may affect you. Consult your lender.

1. You may sell for all cash and pay off your mortgage. This ends your liability.
2. The buyer can assume the mortgage and pay the difference between the unpaid balance and the selling price in cash. If the FHA and the lender are willing to accept the buyer as a mortgagor, you can be released from further liability. This requires the specific approval of the lender and the FHA.

(EITHER OF THE ABOVE TWO METHODS IS PREFERABLE TO METHOD NUMBER 3.)

3. The buyer can pay the difference in cash and purchase subject to the unpaid mortgage balance. FHA or lender approval is not necessary **BUT YOU REMAIN LIABLE FOR THE DEBT. IF THE BUYER DEFAULTS, IT COULD RESULT IN A DEFICIENCY JUDGMENT AND IMPAIR YOUR CREDIT STANDING.**

THE COST OF BORROWING

When you borrow to buy a home, you pay interest and other charges which add to your cost. A larger downpayment will result in a smaller mortgage. Borrow as little as you need and repay in the shortest time. If you borrow $10,000 at 7½% the monthly payment to principal and interest is $10.60 less for a 30-year mortgage than it would be for a 20-year mortgage; but in 30 years you pay $5,772.90, or 62% more interest than in 20 years.

The tables show the monthly payments, interest and mortgage insurance for some typical mortgages at 7½%. Taxes and fire insurance are not shown in the tables, although they are included in your monthly payments.

MONTHLY PAYMENTS, PRINCIPAL & INTEREST, MORT. INS. PREMIUM, TOTAL INTEREST & MORT. INS. PREMIUMS PAID @ 7½%

Term	$10,000-MORTGAGE				$15,000-MORTGAGE				$20,000-MORTGAGE			
	Prin. & Int. Mo. Payt.	Total Interest	Mtg. Ins. Premium Mo. Payt.	Mtg. Ins. Premium Total	Prin. & Int. Mo. Payt.	Total Interest	Mtg. Ins. Premium Mo. Payt.	Mtg. Ins. Premium Total	Prin. & Int. Mo. Payt.	Total Interest	Mtg. Ins. Premium Mo. Payt.	Mtg. Ins. Premium Total
20 Yrs.	$80.60	$ 9,321.49	$4.12	$621.42	$120.90	$13,982.24	$6.19	$932.15	$161.20	$18,642.98	$8.25	$1,242.87
25 "	73.90	12,169.49	4.14	811.29	110.85	18,254.24	6.21	1,216.95	147.80	24,338.98	8.28	1,622.60
30 "	70.00	15,094.39	4.15	1,006.28	105.00	22,641.59	6.22	1,509.44	140.00	30,188.78	8.30	2,012.59

FHA FORM NUMBER 2804 G

[Request for Verification of Employment]

e/Title of Mortgagee Officer: 19

ING: Section 1010 of Title 18, U.S.C., provides: "Whoever, for the purpose of . . . influencing such Administration . . . makes, passes, utters, or publishes any statement, knowing the same to be false . . . shall be fined not more than $5,000 or imprisoned not more than two years, or both."

RM NO. 2800 *(Reverse)* MORTGAGEE'S WORK SHEET

FEDERAL HOUSING ADMINISTRATION

PREPARATION OF APPLICATION FOR CREDIT APPROVAL

For processing the credit of mortgagors under any FHA 1-to 4-family program. This form is primarily for use in converting an outstanding commitment to a firm commitment in the name of an approved mortgagor. The mortgagee should complete all blanks in the form, using information from the outstanding commitment or the mortgagee's estimate. When necessary, attach statements with details.

REQUIRED EXHIBITS TO BE SENT WITH APPLICATION

(1) Credit Report
(2) Form 2004f, Verification of Deposits
(3) Form 2004g, Verification of Employment
(4) One signed or certified copy of sales contract or contract for deed.
(5) A currently dated balance sheet and operating statement if mortgagor's principal income is from own business.
(6) Form 2561, Mortgagor's Contract with Respect to Hotel and transient Occupancy (only 2-3-4-family dwelling).
(7) For Section 222 cases involving Servicemen, attach Certificate of Eligibility, DD Form 802.
(8) For Section 221 low and moderate income houses for displaced persons, attach FHA Form 3476. Certificate of Eligibility.
(9) For Section 235 homeownership cases, attach FHA Form No. 3100, Application for Homeownership Assistance under Section 235 of the NHA and a statement that the application fee, if collected from the applicant, will be refunded if a firm commitment is not issued in the name of the applicant.
(10) For special veterans terms submit Cert. of Veteran Status, VA Form 26-8261 (obtained by veteran from local VA office).
(11) Proposed Construction. If to be built under contract, one signed or certified copy of the contractor's bid or, if a contract is not used, an estimate of construction cost.
(12) Existing Houses - With major alterations, one copy of contractor's bid or, if contractor is not intended, an estimate of the cost of the improvements.
(13) If Form 2900-1 is completed and signed before receipt of the estimate of value, attach a statement, signed by the applicant, that he has received a copy of the applicable Statement or Certificate.

FORM ENTRIES

1. Section of National Housing Act from outstanding commitment, or mortgagee should insert Section requested.
2. FHA Case No., from outstanding commitment, if any; otherwise leave blank.
3. Property Address or description.
4. MORTGAGORS (Husband, Wife, Other) - Name and address; last name first. Present marital status, age, number of dependents and their ages. If co-mortgagor other than husband and wife is involved, enter name(s) but attach separate 2900-1 and required exhibits on co-mortgagor(s).

   The information concerning minority group categories is requested for statistical purposes so the Department may determine the degree to which its programs are utiiized by minority families.

5. MORTGAGEE - Name, address and Zip Code.
6. Amount of loan requested, interest rate, term in months, monthly payment to principal and interest. The mortgage amount is set by applying statutory percentage of sum of value (replacement cost) and closing costs limits to the lower of sum of value (replacement cost) or total acquisition cost. Total acquisition cost is the real estate cost, including repairs and closing costs. Prepayable expenses and non-realty items are not included in total acquisition cost but are used in determining the adequacy of available assets for settlement. Under 203(b) Vets, 221(d)(2) and 235 prepaids may be applied toward cash investment.
7. PURPOSE OF LOAN - Type of transaction. If refinancing, attach statement showing date property acquired, purchase price, date of existing loan, original and present unpaid balances, full monthly payment, maturity date, name of present holder, and amount of any delinquency. Indicate whether mortgagor will be occupant or otherwise.
8. EMPLOYMENT - Occupations; employers' names and addresses; years with present employers. If less than 2 years, attach statement giving details of prior employment.
9. MONTHLY INCOME - Current base pay for all mortgagors. Show commissions, fees, etc. as other income.
10. PREVIOUS MONTHLY HOUSING EXPENSE - Monthly housing expenses paid past 12 months.
11. PREVIOUS MONTHLY FIXED CHARGES - Income taxes, life insurance premiums (show face value of life insurance), social security, retirement and other monthly fixed charges for past 12 months. Enter "none" when appropriate.
12. ASSETS FOR CLOSING - (A) Assets available to complete closing usually consist of bank deposits, savings bonds, and marketable securities. If cash value of life insurance, net returns from property being sold, "work equity," "cash on hand," or a cash gift are to be used, enter amount under Assets for Closing as "Other" and explain. Cash gifts must be supported by the donor's statement indicating no repayment is expected. Assets not to be used in the transaction should be listed under (B).
13. LIABILITIES - Monthly payment and unpaid balance on current debts. Enter the word "none" when appropriate.
14. FUTURE MONTHLY PAYMENTS
    a. Principal & Interest - Monthly payment from FHA Amort. Tables, Form 2025.
    b. FHA Mortgage Insurance Premium - 1/12 of first annual from FHA Amort. Tables, Form 2025.
    c. Ground Rent - Leasehold cases only. 1/12 of annual ground rent.
    d. Total Debt Service - Total of (a), (b) and (c).
    e. Fire Insurance - From outstanding commitment or mortgagee's estimate.
    f. Taxes, Special Assessments - From Form 2800, Mortgagee's Application for Property Appraisal. If improvements have not been assessed, estimate assuming completion of construction.
    g. Total Mortgage Payment - Total of (d), (e) and (f).
    h. Maintenance - From outstanding commitment or mortgagee's estimate.
    i. Heat & Utilities - From outstanding commitment or mortgagee's estimate.
    j. Total Housing Expense - Total of (g), (h) and (i).
    k. Other Recurring Charges - An estimate of debts which will continue beyond 1 year and will be a factor in determining the adequacy of effective income. Enter sum of monthly payments. Include notes, installment accounts, real estate, state taxes, life insurance premiums, social security and retirement. Disregard payments on real estate to be sold or traded and Federal Income taxes. Enter "none" when appropriate.
    l. Total Fixed Payments - Total of (j) and (k).
15. SETTLEMENT REQUIREMENTS
    a. Existing Debt - Refinancing cases only. Total amount owed.
    b. Sale Price - Contract price less amount of (1) closing costs; or (2) prepaid expenses to be paid by seller; or (3) fair market value of non-realty items such as draperies, furniture, free occupancy, etc. Enter (1) as 15(d); (2) as 15(h) and (3) as 15(i).
    c. Repairs and Improvements - from outstanding commitment or mortgagor's estimate of repairs or improvements to be paid by purchaser not included in sales price and required by mortgagor or FHA.
    d. Closing Costs - Mortgagee's estimate regardless of whether costs are included in contract price. Include FHA fees, mortgagee's service charge, title search, preparation of deed, mortgage, mortgage tax, recording fees, etc. Do not include deposits for unaccrued taxes, insurance premiums, etc.
    e. Total - Total of (a), (b), (c) and (d).
    f. Mortgage Amount - As shown in Block 6.
    g. Mortgagors Required Investment - Subtract (f) from (e); enter remainder. Amount must equal or exceed FHA required cash investment for the Program applied under.
    h. Prepayable Expenses - Amount to be deposited by mortgagor for unaccrued taxes, fire insurance premiums, mortgage insurance premiums, etc.
    i. Non-Realty and Other Items - Include non-realty and other items deducted from contract price and omitted from (b), such as draperies, furniture, free occupancy.
    j. Total Requirements - Total of (g), (h) and (i).
    k. Amount Paid - From Sales Contract. Indicate cash or other. Attach statement if other than cash.
    l. Amount to be paid - Subtract (k) from (j). Explain if other than cash.
    m. Assets available - Total assets for closing from 12(A).
16. OTHER REAL ESTATE - Address of other real estate plus Sales Price and mortgage information.
17. MORTGAGOR'S CERTIFICATE - Answer all questions.
18. MORTGAGEE'S CERTIFICATE - Signature of mortgagee.

though roughed-in, or single fixtures, such as a water closet.

Garage -
Attached - Having all or part of one or more walls common to the house or to a covered porch attached to the house.

Seller's Agreement. If proposed construction, the Builder/Seller's Agreement must be executed by the builder or seller.

(NOTE: * FOR ITEMS INDICATED, ENTER WORD "NONE" WHEN APPROPRIATE)

FHA FORM NO. 2900 Rev. 1/70 — REMOVE THIS SHEET - THE REVERSE MAY BE USED AS WORK SHEET

FEDERAL HOUSING ADMINISTRATION

1.

MORTGAGEE'S APPLICATION FOR MORTGAGOR APPROVAL AND COMMITMENT FOR MORTGAGE INSURANCE UNDER THE NATIONAL HOUSING ACT

☐ SEC. 203(b) ☐ SEC.

3. PROPERTY ADDRESS

4. MORTGAGORS:

Husband _____ Age ___

Wife _____ Age ___

Address _____

Married Yrs. No. of Dependents Ages

Co-Mortgagor(s) Age(s)

(Check One)

☐ White *(Non-Minority)* ☐ American Indian ☐ Spanish American

☐ Negro / Black ☐ Oriental ☐ Other Minority

5. MORTGAGEE - Name, Address & Zip Code *(Please Type)*

(Please locate address within corner marks)

6. MORTGAGE APPLIED FOR →	Mortgage Amount	Interest Rate	No. of Months	Monthly Payment Principal & Interest
	$	%		$

7.

PURPOSE OF LOAN: . . . ☐ Finance Constr. on Own Land ☐ Finance Purchase ☐ Refinance Exist. Loan ☐ Finance Impr. to Exist. Prop. ☐ Other

MORTGAGOR WILL BE: . ☐ Occupant ☐ Landlord ☐ Builder ☐ Escrow Commit. Mortgagor

8. EMPLOYMENT

Husband's occupation _____

Employer's name & address _____

_____ years employed ____

Wife's occupation _____

Employer's name & address _____

_____ years employed ____

9. MONTHLY INCOME

Husband's base pay	$
Other Earnings (explain)	
Wife's base pay	
Other Earnings (explain)	
Gross Income, Real Estate	
Other (explain)	
TOTAL	$

10. PREVIOUS MONTHLY HOUSING EXPENSE

Mortgage payment or rent	$
Fire Insurance	
Taxes, special assessments	
Maintenance	
Heat & Utilities	
Other (explain)	
TOTAL	$

11. PREVIOUS MONTHLY FIXED CHARGES

Federal, State & Local income taxes	$
Prem. for $_____ Life Insurance	
Social Security & Retirement Payments	
Installment account payments	
Operating Expenses, other Real Estate	
Other (explain)	
TOTAL	$

12. ASSETS FOR CLOSING

Cash accounts		$
Marketable securities		
Other (explain)		
OTHER ASSETS	(A) TOTAL	$
Cash deposit on purchase		
Other (explain)		
	(B) TOTAL	$

13. LIABILITIES

	Monthly Payt.	Unpd. Bal.
Automobile	$	$
Debts, other Real Estate		
Life Insurance Loans		
Notes payable		
Credit Union		
Retail accounts		
TOTAL	$	$

14. FUTURE MONTHLY PAYMENTS

(a) Principal & Interest	$
(b) FHA Mortgage Insurance Premium	
(c) Ground rent (Leasehold only)	
(d) TOTAL DEBT SERVICE (a+b+c)	
(e) Fire Insurance	
(f) Taxes, special assessments	
(g) TOTAL MTG. PAYT. (d+e+f)	
(h) Maintenance	
(i) Heat & utilities	
(j) TOTAL HSG. EXPENSE (g+h+i)	
(k) Other recurring charges (explain)	
(l) TOTAL FIXED PAYT. (i+k)	$

15. SETTLEMENT REQUIREMENTS

(a) Existing debt (Refinancing only)	$
(b) Sale price (Realty only)	
(c) Repairs & Improvements	
(d) Closing Costs	
(e) TOTAL (a+b+c+d)	
(f) Mortgage amount	
(g) Mortgagor's required investment (e—f)	
(h) Prepayable expenses	
(i) Non-realty & other items	
(j) TOTAL REQUIREMENTS (g+h+i)	
(k) Amt. pd. ☐ cash ☐ Other (explain)	
(l) Amt. to be pd. ☐ cash ☐ Other (explain)	
(m) Tot. assets available for closing (12(A))	$

16. Do you own other Real Estate ☐ Yes ☐ No Is it to be sold ☐ Yes ☐ No FHA mortgage ☐ Yes ☐ No Sales Price $ Orig. Mtg. Amt $

Unpaid Bal. $ Address Lender

17. MORTGAGOR'S CERTIFICATE-- I ☐ have ☐ have not received a copy of the FHA Statement of Value (FHA Form 2800-6) or Veterans Administration Certificate of Reasonable Value (VA Form 26-1843) showing the estimated value of the property described in this application. Have you sold a property within the last 2 years which had an FHA mortgage? ☐ Yes ☐ No. If "Yes" was the mortgage paid in full? ☐ Yes ☐ No. If "No" give FHA Case Number _____, buyer's name _____, property address _____, date of transfer _____, lender's name and address _____ original mortgage amount $ _____, unpaid balance when sold $ _____. Did buyer intend to occupy? ☐ Yes ☐ No. have you ever been obligated on a home loan, home improvement loan or a mobile home which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgement? ☐ Yes ☐ No. If "Yes" attach statement giving full details including date, property address, name and address of lender, FHA or VA Case Number, if any, and reasons for the action. If dwelling to be covered by this mortgage is to be rented, it is a part of, adjacent or contiguous to any project, subdivison, or group of rental properties involving eight or more dwelling units in which you have any financial interest? ☐ Yes ☐ No ☐ Not to be rented. If "Yes" give details. Do you own four or more dwelling units with mortgages insured under any title of the National Housing Act? ☐ Yes ☐ No. If "Yes" submit FHA Form 2561. The Mortgagor certifies that all information in this application is given for the purpose of obtaining a loan to be insured under the National Housing Act and is true and complete to the best of his knowledge and belief. Verification may be obtained from any source named herein.

Signature(s)

Date 19

18. MORTGAGEE'S CERTIFICATE- The mortgagee certifies that all information in this application is true and complete to the best of its knowledge and belief. Signature

Date: 19

WARNING: Section 1010 of Title 18, U. S. C., "Federal Housing Administration transactions," provides: "Whoever, for the purpose of . . .influencing in any way the action of such Administration . . . makes, passes, utters, or publishes any statement, knowing the same to be false . . .shall be fined not more than $5,000 or imprisoned not more than two years, or both."

FHA FORM NO. 2900-1 Rev. 10/70 *(Reverse)*

MORTGAGEE'S WORKSHEET

FHA FORM NO. 2800-5 Rev. 1/70 — SEND TO MORTGAGEE AFTER AUTHORIZED AGENT SIGNS

FEDERAL HOUSING ADMINISTRATION

1. **MORTGAGEE'S APPLICATION FOR MORTGAGOR APPROVAL AND COMMITMENT FOR MORTGAGE INSURANCE UNDER THE NATIONAL HOUSING ACT**

☐ SEC. 203(b) ☐ SEC.

3. **PROPERTY ADDRESS**

4. **MORTGAGORS:**

Husband _____ Age ___

Wife _____ Age ___

Address _____

Married Yrs. No. of Dependents Ages

Co-Mortgagor(s) Age(s)

(Check One)

☐ White *(Non-Minority)* ☐ American Indian ☐ Spanish American

☐ Negro / Black ☐ Oriental ☐ Other Minority

5. **MORTGAGEE** - Name, Address & Zip Code *(Please Type)*

(Please locate address within corner marks)

6. **MORTGAGE APPLIED FOR** →

Mortgage Amount	Interest Rate	No. of Months	Monthly Payment Principal & Interest
$	%		$

7. **PURPOSE OF LOAN: . . .** ☐ Finance Constr. on Own Land ☐ Finance Purchase ☐ Refinance Exist. Loan ☐ Finance Impr. to Exist. Prop. ☐ Other

MORTGAGOR WILL BE: . ☐ Occupant ☐ Landlord ☐ Builder ☐ Escrow Commit. Mortgagor

8. **EMPLOYMENT**

Husband's occupation _____

Employer's name & address _____

_____ years employed ____

Wife's occupation _____

Employer's name & address _____

_____ years employed ____

9. **MONTHLY INCOME**

Husband's base pay . . . . . $ _____

Other Earnings (explain) . . . . . _____

Wife's base pay . . . . . _____

Other Earnings (explain) . . . . . _____

Gross Income, Real Estate . . . . . _____

Other (explain) . . . . . _____

TOTAL $ _____

10. **PREVIOUS MONTHLY HOUSING EXPENSE**

Mortgage payment or rent . . . . . $ _____

Fire Insurance . . . . . _____

Taxes, special assessments . . . . . _____

Maintenance . . . . . _____

Heat & Utilities . . . . . _____

Other (explain) . . . . . _____

TOTAL $

11. **PREVIOUS MONTHLY FIXED CHARGES**

Federal, State & Local income taxes . . . . . $ _____

Prem. for $_____ Life Insurance . . . . . _____

Social Security & Retirement Payments . . . . . _____

Installment account payments . . . . . _____

Operating Expenses, other Real Estate . . . . . _____

Other (explain) . . . . . _____

TOTAL $

12. **ASSETS FOR CLOSING**

Cash accounts _____ $ _____

_____ _____

Marketable securities _____

Other (explain) _____

OTHER ASSETS (A) TOTAL $ _____

Cash deposit on purchase . . . . . _____

Other (explain) _____

_____

_____

(B) TOTAL $

13. **LIABILITIES**

	Monthly Payt.	Unpd. Bal.
Automobile	$	$
Debts, other Real Estate		
Life Insurance Loans		
Notes payable		
Credit Union		
Retail accounts		
TOTAL	$	$

14. **FUTURE MONTHLY PAYMENTS**

(a) Principal & Interest . . . . . $ _____

(b) FHA Mortgage Insurance Premium . . . . . _____

(c) Ground rent (Leasehold only) . . . . . _____

(d) TOTAL DEBT SERVICE (a+b+c) . . . . . _____

(e) Fire Insurance . . . . . _____

(f) Taxes, special assessments . . . . . _____

(g) TOTAL MTG. PAYT. (d+e+f) . . . . . _____

(h) Maintenance . . . . . _____

(i) Heat & utilities . . . . . _____

(j) TOTAL HSG. EXPENSE (g+h+i) . . . . . _____

(k) Other recurring charges (explain) . . . . . _____

(l) TOTAL FIXED PAYT. (i+k) . . . . . $ _____

15. **SETTLEMENT REQUIREMENTS**

(a) Existing debt (Refinancing only) . . . . . $ _____

(b) Sale price (Realty only) . . . . . _____

(c) Repairs & Improvements . . . . . _____

(d) Closing Costs . . . . . _____

(e) TOTAL (a+b+c+d) . . . . . _____

(f) Mortgage amount . . . . . _____

(g) Mortgagor's required investment (e−f) . . . . . _____

(h) Prepayable expenses . . . . . _____

(i) Non-realty & other items . . . . . _____

(j) TOTAL REQUIREMENTS (g+h+i) . . . . . _____

(k) Amt. pd. ☐ cash ☐ Other (explain) . . . . . _____

(l) Amt. to be pd. ☐ cash ☐ Other (explain) . . . . . _____

(m) Tot. assets available for closing (12(A)) . . . . . $ _____

16. Do you own other Real Estate ☐ Yes ☐ No — Is it to be sold ☐ Yes ☐ No — FHA mortgage ☐ Yes ☐ No — Sales Price $ — Orig. Mtg. Amt $

Unpaid Bal. $ — Address — Lender

17. **MORTGAGOR'S CERTIFICATE**-- I ☐ have ☐ have not received a copy of the FHA Statement of Value (FHA Form 2800-6) or Veterans Administration Certificate of Reasonable Value (VA Form 26-1843) showing the estimated value of the property described in this application. Have you sold a property within the last 2 years which had an FHA mortgage? ☐ Yes ☐ No. If "Yes" was the mortgage paid in full? ☐ Yes ☐ No. If "No" give FHA Case Number _____, buyer's name _____, property address _____, date of transfer _____, lender's name and address _____ original mortgage amount $ _____, unpaid balance when sold $ _____. Did buyer intend to occupy? ☐ Yes ☐ No. have you ever been obligated on a home loan, home improvement loan or a mobile home which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgement? ☐ Yes ☐ No. If "Yes" attach statement giving full details including date, property address, name and address of lender, FHA or VA Case Number, if any, and reasons for the action. If dwelling to be covered by this mortgage is to be rented, it is a part of, adjacent or contiguous to any project, subdivison, or group of rental properties involving eight or more dwelling units in which you have any financial interest? ☐ Yes ☐ No ☐ Not to be rented. If "Yes" give details. Do you own four or more dwelling units with mortgages insured under any title of the National Housing Act? ☐ Yes ☐ No. If "Yes" submit FHA Form 2561. The Mortgagor certifies that all information in this application is given for the purpose of obtaining a loan to be insured under the National Housing Act and is true and complete to the best of his knowledge and belief. Verification may be obtained from any source named herein.

Signature(s) Date 19

18. **MORTGAGEE'S CERTIFICATE**- The mortgagee certifies that all information in this application is true and complete to the best of its knowledge and belief. Signature Date: 19

WARNING: Section 1010 of Title 18, U. S. C., "Federal Housing Administration transactions," provides: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, passes, utters, or publishes any statement, knowing the same to be false . . . shall be fined not more than $5,000 or imprisoned not more than two years, or both."

FHA FORM NO. 2900-1 Rev. 10/70 — FHA COPY - FILE IN CASE BINDER

FEDERAL HOUSING ADMINISTRATION ▲

1. SPECIAL PROCESSING ▲
1. ☐ Veteran 2. ☐ Assistance Payment 4. ☐ _____

CREDIT ANALYSIS PAGE

MORTGAGE TO BE INSURED UNDER
☐ SEC. 203(b) ☐ SEC.

2

3. PROPERTY ADDRESS

4. MORTGAGORS:
Husband _____ Age ▲ ____
Wife _____ Age ▲ ____
Address _____

Married ▲ Yrs. No. of Dependents ▲ Ages ▲
Co-Mortgagor(s) Age(s) ▲

5.

▲ *(Check One)*
1 ☐ White *(Non-Minority)* 3 ☐ American Indian 5 ☐ Spanish American
2 ☐ Negro / Black 4 ☐ Oriental 9 ☐ Other Minority

6. MORTGAGE APPLIED FOR →	Mortgage Amount	Interest Rate	No. of Months	Monthly Payment Principal & Interest
	$	%		$

7.
PURPOSE OF LOAN: ▲ ☐ Finance Constr. on Own Land ☐ Finance Purchase ☐ Refinance Exist. Loan ☐ Finance Impr. to Exist. Prop. ☐ Other
MORTGAGOR WILL BE: ▲ ☐ Occupant ☐ Landlord ☐ Builder ☐ Escrow Commit. Mortgagor

8. EMPLOYMENT
Husband's occupation _____
Employer's name & address _____
_____ years employed ____
Wife's occupation _____
Employer's name & address _____
_____ years employed ____

9. EFFECTIVE INCOME — **MONTHLY INCOME**

▲$ _____	Husband's base pay	$ _____
_____	Other Earnings	_____
_____	Wife's base pay	_____
_____	Other Earnings	_____
_____	Income, other Real Estate	_____
_____	Other	_____
▲_____	TOTAL	▲$ _____
_____	Less Federal Income Tax	
▲$	NET EFFECTIVE INCOME	

10. PREVIOUS MONTHLY HOUSING EXPENSE

Mortgage payment or rent	$ _____
Fire Insurance	_____
Taxes, special assessments	_____
Maintenance	_____
Heat & Utilities	_____
Other (explain)	_____
TOTAL	$

11. PREVIOUS MONTHLY FIXED CHARGES

Federal, State & Local income taxes	$ _____
Prem. for $_____ Life Insurance	_____
Social Security & Retirement Payments	_____
Installment account payments	_____
Operating Expenses, other Real Estate	_____
Other (explain)	_____
TOTAL	$

12. ASSETS FOR CLOSING

Cash accounts		$ _____
_____		_____
Marketable securities		_____
Other (explain) _____		_____
OTHER ASSETS	(A) TOTAL	$ _____
Cash deposit on purchase		_____
Other (explain) _____		_____
_____		_____
_____		_____
	(B) TOTAL	$

13. LIABILITIES

	Monthly Payt.	Unpd. Bal.
Automobile	$ _____	$ _____
Debts, other Real Estate	_____	_____
Life Insurance Loans	_____	_____
Notes payable	_____	_____
Credit Union	_____	_____
Retail accounts	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
TOTAL	$	$

14. FUTURE MONTHLY PAYMENTS

(a) Principal & Interest	$ _____	$ _____
(b) FHA Mortgage Insurance Premium	_____	_____
(c) Ground rent (Leasehold only)	_____	_____
(d) TOTAL DEBT SERVICE (a+b+c)	_____	_____
(e) Fire Insurance	_____	_____
(f) Taxes, special assessments	_____ ▲	_____
(g) TOTAL MTG. PAYT. (d+e+f)	_____ ▲	_____
(h) Maintenance	_____ ▲	_____
(i) Heat & utilities	_____	_____
(j) TOTAL HSG. EXPENSE (g+h+i)	_____ ▲	_____
(k) Other recurring charges (explain)	_____	_____
(l) TOTAL FIXED PAYT. (i+k)	$ _____ ▲	$ _____

15. SETTLEMENT REQUIREMENTS

(a) Existing debt (Refinancing only)	$ _____	$ _____
(b) Sale price (Realty only)	_____	▲ _____
(c) Repairs & Improvements	_____	_____
(d) Closing Costs	_____	▲ _____
(e) TOTAL (a+b+c+d)	_____	▲ _____
(f) Mortgage amount	_____	_____
(g) Mortgagor's required investment (e−f)	_____	_____
(h) Prepayable expenses	_____	_____
(i) Non-realty & other items	_____	_____
(j) TOTAL REQUIREMENTS (g+h+i)	_____	_____
(k) Amt. pd. ☐ cash ☐ Other (explain)	_____	_____
(l) Amt. to be pd. ☐ cash ☐ Other (explain)	_____	_____
(m) Tot. assets available for closing (12(A))	$ _____	$ _____

16. Do you own other Real Estate Unpaid Bal. $ ☐ Yes ☐ No Is it to be sold Address ☐ Yes ☐ No FHA mortgage ☐ Yes ☐ No Sales Price $ Lender Orig-Mtg. Amt $

17. RATIOS: Loan to Value % : Term to Remain. Econ. Life % : Total Payt. to Rental Value % : Debt Serv. to Rent Inc. %

18. MORTGAGOR RATING _____
Credit Characteristics _____ Motivating Interest in Ownership _____ Importance of Monetary Interest _____
Adequacy of Available Assets _____ Stability of Effective Income _____ Adequacy of Effective Income _____

Remarks:

Examiner: **Reviewer:** **Date:** 19

FHA FORM NO. 2900-2 Rev. 10/70 FHA COPY - FILE IN CASE BINDER

☐ Reject

Review Date

WARNING: All persons by signing this report certify that they have no interest present or future, in the property, application or mortgage.

FHA FORM NO. 2800-3 Rev 1/70 NOTE TO PROCESSOR: INSERT CARBON BEFORE COMPLETION OF ITEMS 24 THRU 39. FHA COPY-FILE IN CASE BINDER

FEDERAL HOUSING ADMINISTRATION

1. SPECIAL PROCESSING ▲
1. ☐ Veteran 2. ☐ Assistance Payment 4. ☐ _____

DATA PAGE
MORTGAGE TO BE INSURED UNDER
☐ SEC. 203(b) ☐ SEC.

2

3. PROPERTY ADDRESS

4. MORTGAGORS:
Husband _____ Age ▲
Wife _____ Age ▲
Address _____

Married ▲ Yrs. No. of Dependents ▲ Ages ▲
Co-Mortgagor(s) Age(s) ▲

▲ *(Check One)*
1 ☐ White *(Non-Minority)* 3 ☐ American Indian 5 ☐ Spanish American
2 ☐ Negro / Black 4 ☐ Oriental 9 ☐ Other Minority

5.

6. MORTGAGE APPLIED FOR →	Mortgage Amount	Interest Rate	No. of Months	Monthly Payment Principal & Interest
	$	%		$

7.
PURPOSE OF LOAN: ▲ (1) ☐ Finance Constr. on Own Land (2) ☐ Finance Purchase (3) ☐ Refinance Exist. Loan (4) ☐ Finance Impr. to Exist. Prop. (5) ☐ Other
MORTGAGOR WILL BE: ▲ (1) ☐ Occupant (2) ☐ Landlord (3) ☐ Builder (4) ☐ Escrow Commit. Mortgagor

8. EMPLOYMENT
Husband's occupation _____
Employer's name & address _____
_____ years employed _____
Wife's occupation _____
Employer's name & address _____
_____ years employed _____

9. EFFECTIVE INCOME ☐☐ R & S USE — MONTHLY INCOME

▲$ _____	Husband's base pay	$ _____
_____	Other Earnings	_____
_____	Wife's base pay	_____
_____	Other Earnings	_____
_____	Income, other Real Estate	_____
_____	Other	_____
▲ _____	TOTAL	▲$ _____
_____	Less Federal Income Tax	☐☐ R & S USE
▲$	NET EFFECTIVE INCOME	

10. PREVIOUS MONTHLY HOUSING EXPENSE

Mortgage payment or rent	$ _____
Fire Insurance	_____
Taxes, special assessments	_____
Maintenance	_____
Heat & Utilities	_____
Other (explain)	_____
TOTAL	$

11. PREVIOUS MONTHLY FIXED CHARGES

Federal, State & Local income taxes	$ _____
Prem. for $ _____ Life Insurance	_____
Social Security & Retirement Payments	_____
Installment account payments	_____
Operating Expenses, other Real Estate	_____
Other (explain)	_____
TOTAL	$

12. ASSETS FOR CLOSING

Cash accounts	$ _____
_____	_____
Marketable securities	_____
Other (explain) _____	_____
OTHER ASSETS (A) TOTAL	$ _____
Cash deposit on purchase	_____
Other (explain) _____	_____
_____	_____
_____	_____
(B) TOTAL	$

13. LIABILITIES

	Monthly Payt.	Unpd. Bal.
Automobile	$ _____	$ _____
Debts, other Real Estate	_____	_____
Life Insurance Loans	_____	_____
Notes payable	_____	_____
Credit Union	_____	_____
Retail accounts	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
TOTAL	$	$

14. FUTURE MONTHLY PAYMENTS

(a) Principal & Interest	$ _____
(b) FHA Mortgage Insurance Premium	_____
(c) Ground rent (Leasehold only)	_____
(d) TOTAL DEBT SERVICE (a+b+c)	_____
(e) Fire Insurance	_____
(f) Taxes, special assessments	▲ _____
(g) TOTAL MTG. PAYT. (d+e+f)	▲ _____
(h) Maintenance	▲ _____
(i) Heat & utilities	_____
(j) TOTAL HSG. EXPENSE (g+h+i)	▲ _____
(k) Other recurring charges (explain)	_____
(l) TOTAL FIXED PAYT. (i+k)	▲$ _____

15. SETTLEMENT REQUIREMENTS

(a) Existing debt (Refinancing only)	$ _____
(b) Sale price (Realty only)	▲ _____
(c) Repairs & Improvements	_____
(d) Closing Costs	▲ _____
(e) TOTAL (a+b+c+d)	▲ _____
(f) Mortgage amount	_____
(g) Mortgagor's required investment (e−f)	_____
(h) Prepayable expenses	_____
(i) Non-realty & other items	_____
(j) TOTAL REQUIREMENTS (g+h+i)	_____
(k) Amt. pd. ☐ cash ☐ Other (explain)	_____
(l) Amt. to be pd. ☐ cash ☐ Other (explain)	_____
(m) Tot. assets available for closing (12(A))	$ _____

16. Do you own other Real Estate ☐ Yes ☐ No Is it to be sold ☐ Yes ☐ No FHA mortgage ☐ Yes ☐ No Sales Price $
Unpaid Bal. $ Address Lender Orig-Mtg. Amt $

17. RATIOS: Loan to Value % : Term to Remain. Econ. Life % : Total Payt. to Rental Value % : Debt Serv. to Rent Inc. %

18. MORTGAGOR RATING _____
Credit Characteristics _____ Motivating Interest in Ownership _____ Importance of Monetary Interest _____
Adequacy of Available Assets _____ Stability of Effective Income _____ Adequacy of Effective Income _____

Remarks:

Examiner: Reviewer: Date: 19

FHA FORM NO. 2900-3 Rev. 10/70 FHA COPY - SEND TO RESEARCH & STATISTICS DIVISION AFTER INSURANCE ENDORSEMENT

☐ Commit. Staff Val. ☐ Other
☐ Reject
Review Date

NG: All persons by signing this report certify that they have no interest present or future, in the ty, application or mortgage.

RM NO. 2800-4 Rev 1/70 FHA COPY - SEND TO RESEARCH & STATISTICS DIVISION AFTER INSURANCE ENDORSEMENT

FEDERAL HOUSING ADMINISTRATION

PROPERTY ADDRESS

FIRM COMMITMENT FOR
MORTGAGE INSURANCE UNDER THE NATIONAL HOUSING ACT
☐ SEC. 203(b) ☐ SEC.

MORTGAGORS:

Husband _____ Age ____
Wife _____ Age ____
Address _____

Married Yrs. No. of Dependents Ages
Co-Mortgagor(s) Age(s)

(Check One)
1 ☐ White *(Non-Minority)* 3 ☐ American Indian 5 ☐ Spanish American
2 ☐ Negro / Black 4 ☐ Oriental 9 ☐ Other Minority

MORTGAGE APPLIED FOR →	Mortgage Amount	Interest Rate	No. of Months	Monthly Payment Principal & Interest
	$	%		$

☐ **APPROVED:** A note and mortgage described above or as modified below will be insured under the National Housing Act provided one of the mortgagors will be an owner-occupant and all conditions appearing in any outstanding commitment issued under the above case number and those set forth below are fulfilled.

	Mortgage Amount	Interest Rate	No. of Months	Monthly Payment Principal & Interest
☐ MODIFIED AND APPROVED AS FOLLOWS:	$	%		$

ESTIMATE OF VALUE AND CLOSING COSTS

VALUE OF PROPERTY $ _____
Closing Costs . . . . . $ _____
TOTAL *(For Mortgage Insurance Purposes)* . . $ _____

Improved
Floor Area Sq. Ft.

ADDITIONAL CONDITIONS

☐ 2544 - Builders warranty required. ☐ Owner-occupancy NOT required. *(Delete (c) - Mortgagor's Certificate)*

(See item(s) _____ *on Addendum to Commitment)*

THIS COMMITMENT EXPIRES:

_____, 19
(Expiration Date)

DATE OF THIS COMMITMENT:

_____, 19____

_____ *(Authorized Agent for the Federal Housing Commissioner)*

_____ *(Insuring Office)*

INSTRUCTIONS TO MORTGAGEE: Forward to the insuring office: (1) this commitment signed by the mortgagee and mortgagor; (2) a copy of the note, bond or other credit instrument; (3) a copy of the mortgage or other security instrument; (4) a copy of loan closing statement, settlement sheet or a statement signed by the mortgagee which itemizes all charges and fees collected by the mortgagee from the mortgagor; and (5) FHA Mortgage Insurance Certificate completed with case number, Section of the National Housing Act, mortgage amount, property address, mortgagors' names and mortgagee's name and address.

MORTGAGOR'S CERTIFICATE - The undersigned certifies that:

(a) The mortgaged property, including removable equipment items shown on any outstanding commitment issued under the above case number and those set forth above, will be owned by me free and clear of all liens other than that of such mortgage.

(b) I will not have outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the said property except obligations which are secured by property or collateral owned by me independently of the said mortgaged property, or obligations approved by the Commissioner.

(c) One of the undersigned is the occupant of the subject property. (NOTE: Delete item (c) if owner occupancy not required by commitment.)

(d) All charges and fees collected from me as shown in the settlement statement have been paid from my own funds, and no other charges have been or will be paid by me in respect to this transaction.

(e) Check Applicable Box:

☐ This was a refinancing transaction; sale of property was not involved.

☐ Purchase of the lot was a separate transaction; dwelling was built for occupancy by me.

☐ The FHA Statement of Appraised Value or VA Certificate of Reasonable Value was given to me prior to my signing the purchase contract for the property.

☐ The FHA Statement of Appraised Value or VA Certificate of Reasonable Value was not received by me prior to my signing the contract to purchase, but the contract to purchase contained the following language: "It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the seller has delivered to the purchaser a written statement issued by the Federal Housing Commissioner setting forth the appraised value of the property (excluding closing costs) of not less than $ _____ which statement the seller hereby agrees to deliver to the purchaser promptly after such appraised value statement is made available to the seller. The purchaser shall, however, have the privilege and option of proceeding with the consummation of the contract without regard to the amount of the appraised valuation made by the Federal Housing Commissioner." (IF THE AMENDMENT PROCEDURE WAS NECESSARY, THE DOLLAR AMOUNT USED IN THE AMENDATORY CLAUSE IS INSERTED IN THE ABOVE BLANK.)

(f) Neither I, nor anyone authorized to act for me, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by this loan to any person because of race, color, religion, or national origin. I recognize that any restrictive covenant on this property relating to race, color, religion, or national origin is illegal and void and any such covenant is hereby specifically disclaimed. I understand that civil action for preventative relief may be brought by the Attorney General of the United States in any appropriate U. S. District Court against any person responsible for a violation of this certification.

Signature(s) Date: 19

MORTGAGEE'S CERTIFICATE - The undersigned certifies that to the best of its knowledge:

Date _____, 19 _____

(a) None of the statements made in its application for insurance nor in the Mortgagor's Certificate are untrue or incorrect.
(b) The conditions listed above or appearing in any outstanding commitment issued under the above case number have been fulfilled.
(c) Complete disbursement of the loan has been made to the Mortgagor, or to his creditors for his account and with his consent.
(d) The security instrument has been recorded and is a good and valid first lien on the property described.
(e) No charge has been made to or paid by the Mortgagor except as permitted under FHA Regulations.
(f) The copies of the credit and security instruments which are submitted herewith are true and exact copies as executed and filed for record.

Mortgagee *(Please use FHA imprint stamp, or other approved device.)*

(Signature and title of officer)

NOTE: If commitment is executed by an agent in name of the mortgagee, the agent must enter the mortgagee's code number and type code number in blocks below.

Code						Type

FHA FORM NO. 2900-4 Rev. 10/70 MORTGAGEE COPY

FHA FORM NO. 2800-1 REV. 1/70

MORTGAGEE - AFTER COMPLETING THE FORM DETACH THIS SHEET. SEND REST OF FORM TO FHA OFFICE

FEDERAL HOUSING ADMINISTRATION

PROPERTY ADDRESS

FIRM COMMITMENT FOR

MORTGAGE INSURANCE UNDER THE NATIONAL HOUSING ACT

☐ SEC. 203(b) ☐ SEC.

MORTGAGORS:

Husband _____ Age _____

Wife _____ Age _____

Address _____

Married Yrs. No. of Dependents Ages

Co-Mortgagor(s) Age(s)

(Check One)

1 ☐ White *(Non-Minority)* 3 ☐ American Indian 5 ☐ Spanish American

2 ☐ Negro / Black 4 ☐ Oriental 9 ☐ Other Minority

MORTGAGE APPLIED FOR →	Mortgage Amount	Interest Rate	No. of Months	Monthly Payment Principal & Interest
	$	%		$

☐ **APPROVED:** A note and mortgage described above or as modified below will be insured under the National Housing Act provided one of the mortgagors will be an owner-occupant and all conditions appearing in any outstanding commitment issued under the above case number and those set forth below are fulfilled.

	Mortgage Amount	Interest Rate	No. of Months	Monthly Payment Principal & Interest
☐ MODIFIED AND APPROVED AS FOLLOWS:	$	%		$

ESTIMATE OF VALUE AND CLOSING COSTS

VALUE OF PROPERTY $_____

Closing Costs . . . . . $_____

TOTAL *(For Mortgage Insurance Purposes)* . . $_____

Improved

Floor Area Sq. Ft.

ADDITIONAL CONDITIONS

☐ 2544 - Builders warranty required. ☐ Owner-occupancy NOT required. *(Delete (c) - Mortgagor's Certificate)*

(See item(s) _____ *on Addendum to Commitment)*

THIS COMMITMENT EXPIRES:

_____, 19
(Expiration Date)

DATE OF THIS COMMITMENT:

_____, 19

_____ _____
(Authorized Agent for the Federal Housing Commissioner) *(Insuring Office)*

INSTRUCTIONS TO MORTGAGEE: Forward to the insuring office: (1) this commitment signed by the mortgagee and mortgagor; (2) a copy of the note, bond or other credit instrument; (3) a copy of the mortgage or other security instrument; (4) a copy of loan closing statement, settlement sheet or a statement signed by the mortgagee which itemizes all charges and fees collected by the mortgagee from the mortgagor; and (5) FHA Mortgage Insurance Certificate completed with case number, Section of the National Housing Act, mortgage amount, property address, mortgagors' names and mortgagee's name and address.

MORTGAGOR'S CERTIFICATE - The undersigned certifies that:

(a) The mortgaged property, including removable equipment items shown on any outstanding commitment issued under the above case number and those set forth above, will be owned by me free and clear of all liens other than that of such mortgage.

(b) I will not have outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the said property except obligations which are secured by property or collateral owned by me independently of the said mortgaged property, or obligations approved by the Commissioner.

(c) One of the undersigned is the occupant of the subject property. (NOTE: Delete item (c) if owner occupancy not required by commitment.)

(d) All charges and fees collected from me as shown in the settlement statement have been paid from my own funds, and no other charges have been or will be paid by me in respect to this transaction.

(e) Check Applicable Box:

☐ This was a refinancing transaction; sale of property was not involved.

☐ Purchase of the lot was a separate transaction; dwelling was built for occupancy by me.

☐ The FHA Statement of Appraised Value or VA Certificate of Reasonable Value was given to me prior to my signing the purchase contract for the property.

☐ The FHA Statement of Appraised Value or VA Certificate of Reasonable Value was not received by me prior to my signing the contract to purchase, but the contract to purchase contained the following language: "It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the seller has delivered to the purchaser a written statement issued by the Federal Housing Commissioner setting forth the appraised value of the property (excluding closing costs) of not less than $ _____ which statement the seller hereby agrees to deliver to the purchaser promptly after such appraised value statement is made available to the seller. The purchaser shall, however, have the privilege and option of proceeding with the consummation of the contract without regard to the amount of the appraised valuation made by the Federal Housing Commissioner." (IF THE AMENDMENT PROCEDURE WAS NECESSARY, THE DOLLAR AMOUNT USED IN THE AMENDATORY CLAUSE IS INSERTED IN THE ABOVE BLANK.)

(f) Neither I, nor anyone authorized to act for me, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by this loan to any person because of race, color, religion, or national origin. I recognize that any restrictive covenant on this property relating to race, color, religion, or national origin is illegal and void and any such covenant is hereby specifically disclaimed. I understand that civil action for preventative relief may be brought by the Attorney General of the United States in any appropriate U. S. District Court against any person responsible for a violation of this certification.

Signature(s) Date: 19

MORTGAGEE'S CERTIFICATE - The undersigned certifies that to the best of its knowledge:

Date _____, 19 _____

(a) None of the statements made in its application for insurance nor in the Mortgagor's Certificate are untrue or incorrect.

(b) The conditions listed above or appearing in any outstanding commitment issued under the above case number have been fulfilled.

(c) Complete disbursement of the loan has been made to the Mortgagor, or to his creditors for his account and with his consent.

(d) The security instrument has been recorded and is a good and valid first lien on the property described.

(e) No charge has been made to or paid by the Mortgagor except as permitted under FHA Regulations.

(f) The copies of the credit and security instruments which are submitted herewith are true and exact copies as executed and filed for record.

Mortgagee *(Please use FHA imprint stamp, or other approved device.)*

(Signature and title of officer)

NOTE: If commitment is executed by an agent in name of the mortgagee, the agent must enter the mortgagee's code number and type code number in blocks below.

Code						Type

FHA FORM NO. 2900-4 Rev. 10/70

MORTGAGEE - AFTER CLOSING, COMPLETE CERTIFICATES AND RETURN TO FHA. SEE INSTRUCTIONS ABOVE

MORTGAGEE'S CERTIFICATE: The undersigned mortgagee certifies that to the best of its knowledge all statements made in this application and the supporting documents are true, correct and complete.

Signature/Title of Mortgagee Officer: 19

WARNING: Section 1010 of Title 18, U.S.C., provides: "Whoever, for the purpose of . . . influencing such Administration . . . makes, passes, utters, or publishes any statement, knowing the same to be false . . . shall be fined not more than $5,000 or imprisoned not more than two years, or both."

FHA FORM NO. 2800-1 REV. 1/70

FHA COPY-FILE IN CASE BINDER

FEDERAL HOUSING ADMINISTRATION

FIRM COMMITMENT FOR

MORTGAGE INSURANCE UNDER THE NATIONAL HOUSING ACT

☐ SEC. 203(b) ☐ SEC.

PROPERTY ADDRESS

MORTGAGORS:

Husband _____ Age _____

Wife _____ Age _____

Address _____

Married Yrs. No. of Dependents Ages

Co-Mortgagor(s) Age(s)

(Check One)

1 ☐ White *(Non-Minority)* 3 ☐ American Indian 5 ☐ Spanish American

2 ☐ Negro / Black 4 ☐ Oriental 9 ☐ Other Minority

MORTGAGE APPLIED FOR →	Mortgage Amount	Interest Rate	No. of Months	Monthly Payment Principal & Interest
	$	%		$

☐ **APPROVED:** A note and mortgage described above or as modified below will be insured under the National Housing Act provided one of the mortgagors will be an owner-occupant and all conditions appearing in any outstanding commitment issued under the above case number and those set forth below are fulfilled.

	Mortgage Amount	Interest Rate	No. of Months	Monthly Payment Principal & Interest
☐ MODIFIED AND APPROVED AS FOLLOWS:	$	%		$

ESTIMATE OF VALUE AND CLOSING COSTS

VALUE OF PROPERTY $_____

Closing Costs . . . . . $_____

TOTAL *(For Mortgage Insurance Purposes)* . . $_____

Improved Floor Area Sq. Ft.

ADDITIONAL CONDITIONS

☐ 2544 - Builders warranty required. ☐ Owner-occupancy NOT required. *(Delete (c) - Mortgagor's Certificate)*

(See item(s)_____ on Addendum to Commitment)

THIS COMMITMENT EXPIRES:

_____, 19
(Expiration Date)

DATE OF THIS COMMITMENT:

_____, 19

_____ _____
(Authorized Agent for the Federal Housing Commissioner) *(Insuring Office)*

INSTRUCTIONS TO MORTGAGEE: Forward to the insuring office: (1) this commitment signed by the mortgagee and mortgagor; (2) a copy of the note, bond or other credit instrument; (3) a copy of the mortgage or other security instrument; (4) a copy of loan closing statement, settlement sheet or a statement signed by the mortgagee which itemizes all charges and fees collected by the mortgagee from the mortgagor; and (5) FHA Mortgage Insurance Certificate completed with case number, Section of the National Housing Act, mortgage amount, property address, mortgagors' names and mortgagee's name and address.

MORTGAGOR'S CERTIFICATE - The undersigned certifies that:

(a) The mortgaged property, including removable equipment items shown on any outstanding commitment issued under the above case number and those set forth above, will be owned by me free and clear of all liens other than that of such mortgage.

(b) I will not have outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the said property except obligations which are secured by property or collateral owned by me independently of the said mortgaged property, or obligations approved by the Commissioner.

(c) One of the undersigned is the occupant of the subject property. (NOTE: Delete item (c) if owner occupancy not required by commitment.)

(d) All charges and fees collected from me as shown in the settlement statement have been paid from my own funds, and no other charges have been or will be paid by me in respect to this transaction.

(e) Check Applicable Box:

☐ This was a refinancing transaction; sale of property was not involved.

☐ Purchase of the lot was a separate transaction; dwelling was built for occupancy by me.

☐ The FHA Statement of Appraised Value or VA Certificate of Reasonable Value was given to me prior to my signing the purchase contract for the property.

☐ The FHA Statement of Appraised Value or VA Certificate of Reasonable Value was not received by me prior to my signing the contract to purchase, but the contract to purchase contained the following language: "It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the seller has delivered to the purchaser a written statement issued by the Federal Housing Commissioner setting forth the appraised value of the property (excluding closing costs) of not less than $ _____ which statement the seller hereby agrees to deliver to the purchaser promptly after such appraised value statement is made available to the seller. The purchaser shall, however, have the privilege and option of proceeding with the consummation of the contract without regard to the amount of the appraised valuation made by the Federal Housing Commissioner." (IF THE AMENDMENT PROCEDURE WAS NECESSARY, THE DOLLAR AMOUNT USED IN THE AMENDATORY CLAUSE IS INSERTED IN THE ABOVE BLANK.)

(f) Neither I, nor anyone authorized to act for me, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by this loan to any person because of race, color, religion, or national origin. I recognize that any restrictive covenant on this property relating to race, color, religion, or national origin is illegal and void and any such covenant is hereby specifically disclaimed. I understand that civil action for preventative relief may be brought by the Attorney General of the United States in any appropriate U. S. District Court against any person responsible for a violation of this certification.

Signature(s) Date: 19

MORTGAGEE'S CERTIFICATE - The undersigned certifies that to the best of its knowledge:

Date _____, 19 _____

(a) None of the statements made in its application for insurance nor in the Mortgagor's Certificate are untrue or incorrect.

(b) The conditions listed above or appearing in any outstanding commitment issued under the above case number have been fulfilled.

(c) Complete disbursement of the loan has been made to the Mortgagor, or to his creditors for his account and with his consent.

(d) The security instrument has been recorded and is a good and valid first lien on the property described.

(e) No charge has been made to or paid by the Mortgagor except as permitted under FHA Regulations.

(f) The copies of the credit and security instruments which are submitted herewith are true and exact copies as executed and filed for record.

Mortgagee *(Please use FHA imprint stamp, or other approved device.)*

(Signature and title of officer)

NOTE: If commitment is executed by an agent in name of the mortgagee, the agent must enter the mortgagee's code number and type code number in blocks below.

Code						Type

FHA FORM NO. 2900-4 Rev. 10-70

FHA COPY - FILE IN CASE BINDER

Form Approved
Budget Bureau No. 63-R1062

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

2. FHA Case No.

1.

MORTGAGEE'S APPLICATION FOR MORTGAGOR APPROVAL AND COMMITMENT FOR MORTGAGE INSURANCE UNDER THE NATIONAL HOUSING ACT

☐ SEC. 203(b) ☐ SEC.

3. PROPERTY ADDRESS

4. MORTGAGORS:

Husband _____ Age ___

Wife _____ Age ___

Address _____

Married Yrs. No. of Dependents Ages

Co-Mortgagor(s) Age(s)

(Check One)

☐ White *(Non-Minority)* ☐ American Indian ☐ Spanish American

☐ Negro / Black ☐ Oriental ☐ Other Minority

5. MORTGAGEE - Name, Address & Zip Code *(Please Type)*

(Please locate address within corner marks)

6. MORTGAGE APPLIED FOR →

Mortgage Amount	Interest Rate	No. of Months	Monthly Payment Principal & Interest
$	%		$

7.

PURPOSE OF LOAN: . . .
MORTGAGOR WILL BE: .

☐ Finance Constr. on Own Land ☐ Occupant
☐ Finance Purchase ☐ Landlord
☐ Refinance Exist. Loan ☐ Builder
☐ Finance Impr. to Exist. Prop.
☐ Escrow Commit. Mortgagor
☐ Other

8. EMPLOYMENT

Husband's occupation _____

Employer's name & address _____

_____

_____ years employed _____

Wife's occupation _____

Employer's name & address _____

_____

_____ years employed _____

9. MONTHLY INCOME

Husband's base pay	$
Other Earnings (explain)	
Wife's base pay	
Other Earnings (explain)	
Gross Income, Real Estate	
Other (explain)	
TOTAL	$

10. PREVIOUS MONTHLY HOUSING EXPENSE

Mortgage payment or rent	$
Fire Insurance	
Taxes, special assessments	
Maintenance	
Heat & Utilities	
Other (explain)	
TOTAL	$

11. PREVIOUS MONTHLY FIXED CHARGES

Federal, State & Local income taxes	$
Prem. for $_____ Life Insurance	
Social Security & Retirement Payments	
Installment account payments	
Operating Expenses, other Real Estate	
Other (explain)	
TOTAL	$

12. ASSETS FOR CLOSING

Cash accounts	$

13. LIABILITIES

	Monthly Payt.	Unpd. Bal.
Automobile	$	$
Debts, other Real Estate		

Marketable securities		Life Insurance Loans	
Other (explain)		Notes payable	
OTHER ASSETS	(A) TOTAL $	Credit Union	
Cash deposit on purchase		Retail accounts	
Other (explain)			
	(B) TOTAL $	TOTAL $	$

14. FUTURE MONTHLY PAYMENTS		15. SETTLEMENT REQUIREMENTS	
(a) Principal & Interest	$	(a) Existing debt (Refinancing only)	$
(b) FHA Mortgage Insurance Premium		(b) Sale price (Realty only)	
(c) Ground rent (Leasehold only)		(c) Repairs & Improvements	
(d) TOTAL DEBT SERVICE (a+b+c)		(d) Closing Costs	
(e) Fire Insurance		(e) TOTAL (a+b+c+d)	
(f) Taxes, special assessments		(f) Mortgage amount	
(g) TOTAL MTG. PAYT. (d+e+f)		(g) Mortgagor's required investment(e−f)	
(h) Maintenance		(h) Prepayable expenses	
(i) Heat & utilities		(i) Non-realty & other items	
(j) TOTAL HSG. EXPENSE (g+h+i)		(j) TOTAL REQUIREMENTS (g+h+i)	
(k) Other recurring charges (explain)		(k) Amt. pd. ☐ cash ☐ Other (explain)	
(l) TOTAL FIXED PAYT. (j+k)		(l) Amt. to be pd. ☐ cash ☐ Other (explain)	
		(m) Tot. assets available for closing (12(A))	$

16. Do you own other Real Estate ☐ Yes ☐ No Is it to be sold ☐ Yes ☐ No FHA mortgage ☐ Yes ☐ No Sales Price $ Orig. Mtg. Amt $
Unpaid Bal. $ Address Lender

17. MORTGAGOR'S CERTIFICATE-- I ☐ have ☐ have not received a copy of the FHA Statement of Value (FHA Form 2800.6) or Veterans Administration Certificate of Reasonable Value (VA Form 26-1843) showing the estimated value of the property described in this application. Have you sold a property within the last 2 years which had an FHA mortgage? ☐ Yes ☐ No. If "Yes" was the mortgage paid in full? ☐ Yes ☐ No. If "No" give FHA Case Number _____, buyer's name _____, property address _____, date of transfer _____, lender's name and address _____ original mortgage amount $ _____, unpaid balance when sold $ _____. Did buyer intend to occupy? ☐ Yes ☐ No. have you ever been obligated on a home loan, home improvement loan or a mobile home which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgement? ☐ Yes ☐ No. If "Yes" attach statement giving full details including date, property address, name and address of lender, FHA or VA Case Number, if any, and reasons for the action. If dwelling to be covered by this mortgage is to be rented, it is a part of, adjacent or contiguous to any project, subdivison, or group of rental properties involving eight or more dwelling units in which you have any financial interest? ☐ Yes ☐ No ☐ Not to be rented. If "Yes" give details. Do you own four or more dwelling units with mortgages insured under any title of the National Housing Act? ☐ Yes ☐ No. If "Yes" submit FHA Form 2561. The Mortgagor certifies that all information in this application is given for the purpose of obtaining a loan to be insured under the National Housing Act and is true and complete to the best of his knowledge and belief. Verification may be obtained from any source named herein.

Signature(s) Date 19

18. MORTGAGEE'S CERTIFICATE- The mortgagee certifies that all information in this application is true and complete to the best of its knowledge and belief. Signature Date: 19

WARNING: Section 1010 of Title 18, U. S. C., "Federal Housing Administration transactions," provides: "Whoever, for the purpose of . . influencing in any way the action of such Administration . . . makes, passes, utters, or publishes any statement, knowing the same to be false . . . shall be fined not more than $5,000 or imprisoned not more than two years, or both."

FHA FORM NO. 2900-1 Rev. 10/70 **FHA COPY - FILE IN CASE BINDER**

FHA FORM NO. 2004 G
Revised 12/66

C 1131

Form Approved
Budget Bureau No. 63-R267.5.

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

REQUEST FOR VERIFICATION OF EMPLOYMENT

1. NAME OF APPLICANT	2. FHA Case No. (when available)
3. ADDRESS OF APPLICANT	

INSTRUCTIONS: Initiated by Mortgagee and forwarded to Applicant's Employer for completion and return.

Name and Address of Applicant's Employer

To Employer:

An application has been made by the above-named applicant for a mortgage loan to be made by this institution and insured by the Federal Housing Administration. The confirmation requested is to be forwarded to us for the confidential use of ourselves and the Federal Housing Administration.

The Applicant's signed statement authorizes the Commissioner and Mortgagee to verify the statements contained in his application by communicating with any firm or institutions named therein.

4. Date	5. Mortgagee

EMPLOYER'S VERIFICATION

6. Present position	7. Length of employment	8. PRESENT RATE OF PAY*	
		HOURLY	ANNUAL
Name and Address of Mortgagee		$	$
		ADDITIONAL COMPENSATION-ACTUAL AMOUNTS RECEIVED PAST 12 MONTHS	
		Overtime	$
		Commissions	$
		Bonus	$

* If applicant is in military service please report income on a monthly basis as follows:

Base pay $ _____ quarters and subsistence $ _____ flight or hazard duty allowance $ _____

9. Probability of continued employment

10. Other remarks

The above is furnished you in strict confidence in response to your request

11. Date	12. Official title	13. Signature of employer

U.S. GOVERNMENT PRINTING OFFICE : 1966 O—291-759

C 1132

FHA FORM NUMBER 2004 F

[Request for Verification of Deposit]

FHA FORM NO. 2004 F
(Revised 1/65)

C 1133

Form Approved
Budget Bureau No. 63-R266.5.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

REQUEST FOR VERIFICATION OF DEPOSIT

In an application made to the undersigned institution for a loan to be insured by the Federal Housing Administration, the above-named borrower has indicated in his financial statement the balance on deposit with you as shown on this form.

1. FHA Case No. *(When available)*

2. NAME OF APPLICANT

3. ADDRESS

Name and Address of Bank or Other Depository

4. Date

5. Balance

6. Type of Account

This confirmation is to be forwarded to us for the confidential use of ourselves and the Federal Housing Administration together with any other information that may be of assistance in rendering a decision.

The applicant's signed statement authorizes the Commissioner and Mortgagee to verify the statements contained in his application by communicating with any of the firms or institutions named therein.

Any statements on your part or on the part of any of your officers as to the responsibility or standing of any person, firm or corporation is a matter of opinion and given as such, and solely as a matter of courtesy, and for which no responsibility is attached to your institution or any of your officers.

PLEASE RETURN COMPLETED FORM TO THE UNDERSIGNED MORTGAGEE

Name and Address

(Date of this Request)

(Signature)

VERIFICATION OF BANK OR OTHER DEPOSITORY

7. Is statement approximately correct? ☐ YES ☐ NO	If "No" Amount $	10. Loans outstanding to applicant	Date of Loan	Balance Outstanding
8. Account less than 2 months	Date opened	SECURED		$
9. Approximate balance past 2 months	Average $	UNSECURED		$

11. Additional information

This information is furnished to you in strict confidence in response to your request and is solely for use by you and the Federal Housing Administration in connection with the above application for a loan.

12. Date	13. Official title	14. Signature

* U.S. GOVERNMENT PRINTING OFFICE : 1967 O—269-256

C 1134

FHA FORM NUMBER 2026

[Report on Application]

C 1135

REPORT ON APPLICATION

MORTGAGOR - Name, Address and Zip Code	Date	FHA Case No.
	Sept 4 1956	

☐ FEE CREDITED ☐ FEE EARNED (Reconsideration may be requested within 2 months of the last "Fee Credit" rejection or of the initial "Fee Earned" rejection, whichever is later.)
Fee involved only on initial submissions.

MORTGAGEE - Name, Address and Zip Code	Insuring Office (Service Office) Located At:
[illegible]	

YOUR APPLICATION CANNOT BE PROCESSED / THE FOLLOWING ITEMS WERE NOT SUBMITTED OR COMPLETED:

R1 ☐ Form 2005 - Description of Materials (MPS 103)
R2 ☐ Plot Plan (MPS 101-2 and 104-2)
R3 ☐ Foundation or Basement Plan (MPS 101-3)
R4 ☐ Floor Plans (all floors) (MPS 101-3)
R5 ☐ Exterior Elevations (MPS 101-4)
R6 ☐ Exterior Wall Section (MPS 101-5.1)
R7 ☐ Kitchen Cabinet Details (MPS 101-5.6)
R8 ☐ Stair Section, Fireplace Section and elevation, and Roof Details (MPS 101-5)
R9 ☐ Heating Layout and Heat Loss Calculation (MPS 101-3.9)
R10 ☐ Water Supply System Plans and Specs. (MPS 104)
R11 ☐ Sewage Disposal System Plans & Specs. (MPS 104)
R12 ☐ Credit report
R13 ☐ 2004 f - Verification of Deposits
R14 ☐ 2004g - Verification of Employment
R15 ☐ Currently dated balance sheet
R16 ☐ Copy of sales contract or contract for deed
R17 ☐ 2561 - Mortgagor's Contract
R18 ☐ 3476 - Certificate of Eligibility (Sec. 221)
R19 ☐ DD 802 - Certificate of Eligibility (Sec. 222)
R20 ☐ Complete 2800-1: ☐ Mortgage Code No. ☐ Month and year completed ☐ Never occupied (If applicable) ☐ Signature of mortgagee and/or Builder and/or Spon.
R21 ☐ Complete 2900, Item(s) _____
R22 ☐ Complete Amendatory Statement
R23 ☐ 2010 - Equal Employment Opportunity Certification
R24 ☐ 2011 - Equal Opportunity in Housing Certificate
R25 ☐ Mortgagee's Number not shown
☐ Other- _____

YOUR APPLICATION IS NOT ELIGIBLE FOR THE REASONS CHECKED

ARCHITECTURAL

A1 ☐ _____ room area does not meet FHA Reqmts.
A2 ☐ Does not meet FHA side yard requirements.
A3 ☐ Storage space does not meet FHA Requirements.
A4 ☐ Stairway head room does not meet FHA Reqmts.
A5 ☐ Access to only bathrm. does not meet privacy Reqmts.
A6 ☐ Extensive inadequancy of framing members.
A7 ☐ Dwelling has major deficiencies: visual appeal-livability-natural light & vent. - structural quality-resistance to elements & use-suitability of mech. equipment-conformity with anticipated desires of typical purchasers.
A8 ☐ (Proposed) improvements do not meet FHA Reqmts.

MORTGAGE CREDIT

M1 ☐ Mortgagor's general credit standing unacceptable.
M2 ☐ Stability of income not established.
M3 ☐ Stable income Mtgr. can reasonably be expected to maintain not in proper relation to total obligations.
M4 ☐ Mtgr's. net income not adequate to support prospective housing expense and other fixed obligations.
M5 ☐ Income of Co-Mortgagor not considered effective.
M6 ☐ Insurable loan limited to $ _____. Mtgr. has insufficient available assets to close.
M7 ☐ Exhibits indicate Mtgr. resorting to unacceptable secondary financing; verify source of funds.
M8 ☐ Amts. credited to Mtgr. for work or services does not bear proper relation to FHA's est. of val. of work or services.
M9 ☐ Work or services unacceptable as "sweat equity."
M10 ☐ Proposed withdrawal of funds presently invested in Mortgagor's business could result in financial difficulties which may seriously impair earnings capacity.
M11 ☐ Analysis of factors pertaining to Mortgagor indicates unacceptable risk.
M12 ☐ Details needed on Notes Payable Outstanding indicating any connection with subject property.

VALUATION

V1 ☐ Individual water system with insufficient operating experience. Submit: plot plan; signed cert. from builder or subcontractor stating syst. complies with drawings & specs.; current approval of local Health Authority.
V2 ☐ Individual sewage disposal system with insufficient operating experience. Submit: plot plan & as-built drawings & specs.; cert. from builder or subcontractor stating syst. complies with drawings & specs. and sub-surface disposal area is adequate for absorption of all liquids discharged to it.
V3 ☐ Unable to gain access to dwelling. Request reopening when arrangements made to complete inspection.
V4 ☐ Dwelling not sufficiently complete. May be reopened when construction completed or, submit plans, and Form 2005 covering incomplete items.
V5 ☐ Undeveloped location. Subdivision analysis required.
V6 ☐ Lot Size: yard area around dwelling inadequate.
V7 ☐ Surrounding area too sparsely developed.
V8 ☐ Property in area subject to periodic flooding.
V9 ☐ Proximity of location to railroad.
V10 ☐ Located on heavily traveled arterial street.
V11 ☐ Location subject to noxious orders, smoke, noise, etc.
V12 ☐ Design is inharmonious with the neighborhood.
V13 ☐ Neighborhood transition from single-family residential to rooming house and commercial use.
V14 ☐ Inspection reveals location is unacceptable.

GENERAL

G1 ☐ Unable to determine acceptability due to contradictory information on _____.
G2 ☐ A party to the transaction is on a compliance list.
G3 ☐ (Application) (committed) under another case number.
G4 ☐ Appraisal previously made and case rejected.
G5 ☐ Unsatisfactory market condition.

Other: Plot Plan Lacks [illegible] with contract
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

C 1136

FHA FORM NUMBER 2561

[Mortgagor's Contract With
Respect to Hotel and Transient
Use of Property]

FHA FORM NO. 2561
Rev. 7/68

FEDERAL HOUSING ADMINISTRATION

Approval of Budget Bureau not required

C 1137

MORTGAGOR'S CONTRACT WITH RESPECT TO HOTEL AND TRANSIENT USE OF PROPERTY

Date _____

FHA Case No. _____

BY THIS CONTRACT between the person signing as, and hereinafter referred to as the Mortgagor, and the Secretary of Housing and Urban Development, hereinafter referred to as the Secretary, the parties hereto agree and covenant as follows:

The Secretary has been requested to insure a mortgage on the housing identified in the caption hereof under the provisions of the National Housing Act, as amended;

The Mortgagor as the owner of said property by reason of such mortgage insurance will receive the benefits of said Act;

Sec. 513(a) of the National Housing Act, as amended, provides that as long as mortgage insurance is outstanding no portion of the housing covered by any such mortgage shall be used for transient or hotel purposes;

The Secretary has defined the term transient or hotel purposes to mean (1) any rental for a period less than 30 days, or (2) any rental if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linen, and bellboy service.

In consideration of the foregoing the Mortgagor covenants and agrees that so long as any of the housing identified in the caption hereof or any part thereof is subject to a mortgage insured under the provisions of the National Housing Act, the Mortgagor, his successors and assigns, will not rent, offer for rent, permit the rental or permit the offering for rental of such housing or any part thereof for transient or hotel purposes.

By _____
Mortgagor

SECRETARY OF HOUSING AND URBAN DEVELOPMENT
BY: FEDERAL HOUSING COMMISSIONER

By: _____
Authorized Agent

MORTGAGOR'S OATH

I, _____, being first duly sworn, do hereby certify and say that I am the Mortgagor who executed the foregoing contract and I am familiar with the provisions of Section 513(a) of the National Housing Act, as amended, as set forth in part of the reverse hereof. I do further certify that so long as any part of the housing identified in the caption of said contract is subject to a mortgage insured under said National Housing Act, as amended, I will not rent or offer for rent, or permit such housing to be rented or offered for rent, for hotel and transient purposes.

STATE OF)
) ss:
COUNTY OF)

Before me, a Notary Public in and for the State and County aforesaid, appeared _____, who being first duly sworn, acknowledged that he was the person signing the aforesaid Mortgagor's Contract and Oath for the uses, purposes and considerations therein set forth.

IN WITNESS WHEREOF I have hereunto affixed my hand and seal this _____ day of _____

_____
Notary Public

C 1138

DUN & BRADSTREET, INC. FACTUAL DATA REPORT (98C)

C 1139

Dun & Bradstreet, Inc.

FACTUAL DATA REPORT • 96C
(REVISED)
NEW YORK DISTRICT

NAME AND ADDRESS GIVEN

CORRECT NAME AND ADDRESS

1-A. Approximate age of subject	1-A.	
B. Marital status - number of dependents	B.	
C. Length of time married	C.	
2-A. Is his general reputation as to character, habits, and morals good?	2-A.	
B. Did you learn of any domestic difficulties?	B.	
C. Does he have the reputation of living within his income?	C.	
3-A. Name of employer	3-A.	
B. Position held - length of present connection	B.	Years _____
C. Is his employment here reasonably secure?	C.	
D. Does he work full time steadily? (If not, how many days per week)?	D.	
E. Has his employment status changed within the past two years?	E.	
F. Has his health interfered with his progress?	F.	
4-A. Annual earned income from his employment or business ☐ Exact ☐ Estimated	4-A. $	
B. Approximate income, if any, from other sources. (Investments, rentals, avocations, contributions)	B.	
C. About what would you estimate his net worth	C.	
D. If his wife is employed give name of her employer	D.	
E. Position she holds - Approximate income	E.	Income $ _____
F. Approximate number of years she has been employed	F.	

REMARKS: 1. Amplify his business history. (This report shall contain information as to the subject's previous employment status, location and salary, if there has been a change in employment status within the past two years.)

2. The reporting bureau certifies that: (a) ☐ public records have been checked for suits, judgments, foreclosures, garnishments, bankrupticies, and other legal actions involving the subject with the results indicated below; or, (b) ☐ equivalent information has been obtained through the use of a qualified public records reporting service with the results indicated below.

3. The reporting bureau certifies that the subject's credit record in the payment of bills and other obligations has been checked: (a) ☐ through the credit accounts extended by the principal department stores, if any, and the principal general stores of the community in which the subject resides with the results indicated below; or, (b) ☐ through accumulated credit records of such stores of the community in which the subject resides, with the results indicated below.

TUMBLE OVER - WRITE FROM TOP DOWN - ITEM 1, (CONT'D), ITEM 2. (CONT'D), ETC.)

This report is furnished by DUN & BRADSTREET, Inc. in STRICT CONFIDENCE at your request under your subscription agreement for your exclusive use as a basis for credit, insurance, marketing and other business decisions and for no other purpose. DUN & BRADSTREET, Inc.

C 1140

EASTERN SERVICE FORM 1

[Mortgagor's Child Care Statement]

NASSAU IV 8-4200
NEW YORK CITY JA 6-4200
SUFFOLK MO 7-4200
WESTCHESTER GR 2-1500

C 1141

F.H.A. APPROVED
LENDING INSTITUTION

EASTERN SERVICE CORPORATION
MORTGAGE FINANCING
175 FULTON AVENUE
HEMPSTEAD, N. Y. 11550

Federal Housing Administration
175 Fulton Avenue
Hempstead, N.Y.

Re:# _____

Name: _____

Address: _____

_____

Gentlemen:

This is to inform you that while I am at work my children are cared for as follows:

_____

_____

_____

_____

_____

Very truly yours,

_____

Child Care

C 1142

EASTERN SERVICE FORM 4

[Seller's Authorization to Obtain
FHA Conditional Appraisal]

C 1143

NASSAU IV 3-4200
NEW YORK CITY JA 6-4200
SUFFOLK MO 7-4200
WESTCHESTER GR 2-1500

F.H.A. APPROVED
LENDING INSTITUTION

EASTERN SERVICE CORPORATION

MORTGAGE FINANCING
175 FULTON AVENUE
HEMPSTEAD, N. Y. 11550

DATE

Federal Housing Administration
175 Fulton Avenue
Hempstead, New York 11550

I_____, the seller, residing at

_____

authorize Eastern Service Corporation to obtain an FHA Conditional

appraisal on property located at_____

_____.

I purchased_____

on _____.
DATE

_____

C 1144

EASTERN SERVICE FORM 12

[Mortgagor's Certification as to
Source of Funds for Down Payment]

C 1145

NASSAU IV 8-4200
NEW YORK CITY JA 6-4200
SUFFOLK MO 7-4200
WESTCHESTER GR 2-1500

F.H.A. APPROVED
LENDING INSTITUTION

EASTERN SERVICE CORPORATION

MORTGAGE FINANCING
175 FULTON AVENUE
HEMPSTEAD, N. Y. 11550

Case _____

We (I) hereby certify that we (I) have made payment to date in the amount of $_____ to _____ for the purchase of dwelling located at _____

The funds for these payments were obtained from the following sources.

1. Sale of Savings Bonds (list below)
2. Sale of stock and other bonds (list below)
3. Withdrawal from bank account at _____
name of bank

_____
account number

4. Sale of house at _____
5. Other _____
state source of funds and verify with supporting documents _____.

We (I) make this statement with the full knowledge that FHA will rely upon it truth when considering my (our) application for mortgage insurance.

_____

_____

C 1146

EASTERN SERVICE FORM 13

[Relationship Affidavit of Mortgagors]

C 1147

RELATIONSHIP AFFIDAVIT

STATE OF NEW YORK)
) SS:
COUNTY OF)

_____and_____

being duly sworn, deposes and says as follows:

(1.) They are related to each other in that_____

_____is the_____of_____

_____.

(2.) That your deponents are the purchasers of premises known as_____and will occupy the dwelling together.

(3.) That your deponents will contribute equally to the monthly carrying charges and as such, will take title to these premises and sign all necessary mortgage documents as co-mortgagors.

WHEREFORE, this affidavit is made to induce the Federal Housing Administration to issue its Firm Commitment for a mortgage in the sum of_____naming your deponents as co-mortgagors knowing that the said Federal Housing Administration will rely on the truth of the statements contained herein. Your deponents state that they will occupy the same apartment and rent the other apartment.

_____

_____

Sworn to before me this

day of , 19

_____

C 1148

EASTERN SERVICE FORM 18

[Eastern Service Request Directed
to Other Lending Institutions for
Character and Credit History of
Mortgagor]

C 1149

NASSAU IV 3-4200
NEW YORK CITY JA 6-4200
SUFFOLK MO 7-4200
WESTCHESTER GR 2-1500

F.H.A. APPROVED
LENDING INSTITUTION

ESC #_____

EASTERN SERVICE CORPORATION

MORTGAGE FINANCING
175 FULTON AVENUE
HEMPSTEAD, N. Y. 11550

FHA #37_____

Mr.
of premises
on which you hold a mortgage, has applied to the Federal Housing Administration for mutual mortgage insurance involving the subject mortgagor with whom it is believed you have had credit experience. Therefore, a statement of your experience including any other information that will enable the FHA to make an intelligent decision is respectfully requested. Such information will be held in the strictest confidence.

Please fill in the form at the bottom of this letter. Your prompt consideration of this request will be sincerely appreciated.

Very truly yours,

EASTERN SERVICE CORPORATION

CHARACTER AND CREDIT STATEMENT

How long have you known subject?_____ years
How long have you given credit accommodations?_____ years
Kind of credit accommodations:_____
Has credit been secured or unsecured:_____
Highest credit allowed:_____
Amount now owing $_____ Prescribed monthly payments $_____
Are the monthly payments according to terms?_____
If not, state payments made:_____

If you have had any experience with the subject mortgagor in real estate mortgage obligations, please answer the following:

Date of Mortgage_____ Original Amount $_____

Date of Maturity_____ Present Balance $_____

Terms of payment_____

_____

Is interest in Default?_____ Amount $_____ period_____
Have you advanced unpaid Taxes?_____ Amount $_____
Has Account been satisfactory?_____

_____

Remarks: CURRENT STATUS
Is this mortgage F.H.A. or V.A.

_____
Signature

PRO-18

C 1150

EASTERN SERVICE FORM 48

[Request for Re-Opening and Re-Consideration of case]

C 1151

NASSAU IV 3.4200
NEW YORK CITY JA 6.4200
SUFFOLK MO 7.4200
WESTCHESTER GR 2.1500

F.H.A. APPROVED
LENDING INSTITUTION

EASTERN SERVICE CORPORATION

MORTGAGE FINANCING
175 FULTON AVENUE
HEMPSTEAD, N. Y. 11550

Federal Housing Administration
175 Fulton Avenue
Hempstead, N.Y.

RE: F.H.A. #373-

Gentlemen:

We respectfully request that you reopen and reconsider the above captioned case:

Please call the broker,
and he will arrange to have someone meet the appraiser at the premises.

Very truly yours,

EASTERN SERVICE CORPORATION

Florence Behar
Assistant Vice President

C 1152

EASTERN SERVICE FORM 51

[FHA Required Amendment to Real Estate Contract]

C 1153

AMENDMENT TO CONTRACT

It is expressly agreed that notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposit or otherwise unless seller has delivered to the purchaser a written statement issued by the Federal Housing Administration setting forth the appraised value of the property for mortgage insurance purposes of not less than $_____ which statement the seller hereby agrees to deliver to the purchaser promptly after such appraised value statement is made available to the seller.

The purchaser shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the appraised valuation made by the Federal Housing Commissioner.

_____
Seller

_____
Seller

_____
Purchaser

_____
Purchaser

N O T E:

The F.H.A. requires that the above paragraphs be in all contracts of sale.

The F.H.A. appraised valuation does not establish sales price.

EASTERN SERVICE CORPORATION
175 FULTON AVENUE HEMPSTEAD, N. Y. 11550
IV 3-4800

C 1154

EASTERN SERVICE FORM 83

[Eastern Service Request Re: Assignment of Conditional Commitment]

C 1155

NASSAU IV 3-4200
NEW YORK CITY JA 4-4200
SUFFOLK MO 7-4200
WESTCHESTER GR 2-1500

F.H.A. APPROVED
LENDING INSTITUTION

EASTERN SERVICE CORPORATION
MORTGAGE FINANCING
175 FULTON AVENUE
HEMPSTEAD, N. Y. 11550

RE:

Gentlemen:

We would greatly appreciate the following re the above captioned case:

Letter of Assignment
Application for Conditional Commitment
Conditional Commitment

Thank you for your courtesy and cooperation in this matter.

Very truly yours,

EASTERN SERVICE CORPORATION

C 1156

EASTERN SERVICE FORM

[Mortgagor's Computation of Net
Rental Income]

C 1157

EASTERN SERVICE CORPORATION
175 FULTON AVENUE
HEMPSTEAD, NEW YORK

DATE_____ CASE#_____

1. GROSS INCOME FROM RENTS _____

2. LESS EXPENSES:

a. Allowance from vacancies and collections _____

b. Hazard Insurance _____

c. Taxes _____

d. Heat _____

e. Maintenance & Repairs _____

f. Other Expenses _____

TOTAL EXPENSES _____
PRINCIPAL & INTEREST _____

NET TO MORTGAGOR _____

SIGNATURE OF MORTGAGOR _____

C 1158

EASTERN SERVICE FORM

[Eastern Request for Credit
Experience From Prior
Mortgagee]

C 1159

NASSAU	IV 3-4200
NEW YORK CITY	JA 6-4200
SUFFOLK	MO 7-4200
WESTCHESTER	OR 8-1500

F.H.A. APPROVED
LENDING INSTITUTION

ESC #_____

EASTERN SERVICE CORPORATION

MORTGAGE FINANCING
175 FULTON AVENUE
HEMPSTEAD, N. Y. 11550

FHA #_____

of premises
on which you hold a mortgage, has applied to the Federal Housing Administration for mutual mortgage insurance involving the subject mortgagor with whom it is believed you have had credit experience. Therefore, a statement of your experience including any other information that will enable the FHA to make an intelligent decision is respectfully requested. Such information will be held in the strictest confidence.

Please fill in the form at the bottom of this letter. Your prompt consideration of this request will be sincerely appreciated.

Very truly yours,

EASTERN SERVICE CORPORATION

Please answer the following:

FHA Mortgage_____

Mortgagor's date of Mortgage_____Original Amount$_____

Date of Maturity_____Present Balance$_____

Terms of Payment_____

Status

_____
Signature

C 1160

EASTERN SERVICE WORKSHEET FORM

[Computation of Maximum Mortgage Amount]

C 1161

Work Sheet Section 221-D-2

Other than displaced person 1 Family

Case #_____

Maximum mortgage amount will be the lowest of the following criteria.

1. 100% of FHA Value _____

2. 97% of the sum of FHA value and pre-paid items

FHA Value _____

Prepaid Expenses _____

Total _____

X97

_____

3. 97% of Acquisition Cost

Sales Price _____
Closing Costs _____
Prepaid Expenses _____

Total _____

X97 _____

Mortgage Amount _____

Acquisition cost under Section 221-D-2 is defined as the sum of the cost of the Realty, Closing Costs and Prepaid Expenses.

C 1162

EASTERN SERVICE FORM

[Specification of Closing Costs and
Pre-Paid Items]

C 1163

NASSAU IV 8-4200
NEW YORK CITY JA 6-4200
SUFFOLK MO 7-4200
WESTCHESTER GR 2-1500

F.H.A. APPROVED
LENDING INSTITUTION

EASTERN SERVICE CORPORATION

MORTGAGE FINANCING
175 FULTON AVENUE
HEMPSTEAD, N. Y. 11550

To: Mortgage Credit Section Date: _____

Re: File #373- 221 D-2

1) Please state whether Closing Costs and proposed items are in addition to the sales price indicated in the Contract of Sale for the captioned applications.
YES ( ) NO ( )

2) Please list the approximate Closing Costs and items of prepaid expense below.

Mortgage Tax	_____
Recording Mortgage	_____
Recording Deed	_____
Title Fees	_____
Survey	_____
Legal Fee	_____
Appraisal	_____
Origination Fee	_____
Credit Report	_____
Other	_____
TOTAL	_____

PREPAID ITEMS:	Taxes	_____
	Insurance	_____
	FHA Insurance	_____
	TOTAL	_____

_____
Authorized Agent for Lender

Please return original and retain copy for your file

MEMBER

MORTGAGE BANKERS ASSOCIATION
NATIONAL ASSOCIATION OF REAL ESTATE BOARDS

LONG ISLAND REAL ESTATE BOARD
SUFFOLK COUNTY REAL ESTATE BOARD

C 1164

REMARKS OF P. N. BROWNSTEIN
ASSISTANT SECRETARY-COMMISSIONER
AT DIRECTORS CONFERENCE
MONDAY, OCTOBER 23, 1967

FHA's JOB TODAY

We meet at a critical moment in the history of our country, and at an equally critical time in the life of FHA.

The trouble in our cities -- the riots, looting and sniper fire; the dramatic disparity between the living conditions of the poor and discriminated against and the material affluence of middle class America; the crimes and the lawlessness -- all these things have revealed with chilling clarity the enormous and explosive problems that ferment in the slums and ghettos of our cities.

This country is fighting a guerilla war in far off Viet Nam. Something similar and equally deadly is threatened in our cities - and in too many places it actually has happened. Few people doubt that, unless major measures are taken, the trouble in our cities can prove to be as great a threat to our national security as the fighting in Viet Nam.

This, I am sure, is not news to you. You have only to open any newspaper, or any magazine, to confirm all that I have said, and much more that I have not said.

Responsible people throughout the country are groping for a better understanding of the causes of these ominous outbursts of urban violence. But no thoughtful person seriously believes there is any instant answer, any easy panacea. Because the causes are deep-seated and have developed over time, the solutions must be basic ones which remove the sources of discontent, deprivation, and despair. Perhaps we can identify the long term solutions best by asking ourselves what much of the protest is about. People want recognition, opportunity and hope, people want status and dignity. They want to join the mainstream of American society. They want to participate in its unparalleled abundance. They want an end to the discrimination that has denied them these things. In particular, they want better education, better jobs, and better housing. They want a chance. They want to know they have a chance. They want evidence that the nation cares and is willing to make this chance available. America must begin to respond to these needs quickly and visibly.

By now you may be wondering if this is not a rather strange introduction for a kick-off speech of a HUD Assistant Secretary in charge of FHA operations to a Washington meeting of FHA Directors and Chief Underwriters. If those questions are running through your mind, it's a good thing you came to this meeting.

Because I am going to tell you how these grave matters relate directly to you and your jobs. The reason is as simple as it is fundamental.

As the unit of the Department of Housing and Urban Development with principal responsibility for administering private housing programs, it is our job to enlist and encourage private enterprise to play a leading role in providing decent housing for families of low- and moderate-income, and in improving housing and related human conditions in the inner city -- especially in the slums and blighted portions of the inner city. This is one of the principal reasons the Department was created; it is one of the major objectives the Secretary has announced again and again. It is what the American people, the Congress and the President expect of us. It is the greatest and most urgent responsibility of FHA -- its principal reason for existence in the year of 1967.

You may be thinking that this is a new and strange job for FHA. It is new; but it is not strange. Every government organization must use its programs to deal with today's problems. Every organization must change as the needs of the country change. It will do us no good to look wistfully back at the days when FHA's principal role, and its proudest achievement, was the establishment of the long term, low downpayment mortgage as a revolutionary

device for increasing the number of Americans who could afford a good house in the suburbs, or a decent apartment. As an organization, we have a right to reflect with pride on this great accomplishment. But we must also recognize that we have done this job so well that FHA insured mortgages now are needed and used for only a tiny portion of suburban new construction.

It will do no good to look wistfully back to the 1940's and early 1950's when FHA's principal job was to help provide housing for war workers and, later to provide privately built dwelling units in great abundance for returning servicemen and to overcome the critical post-war housing shortage. This job, too, has been done, with considerable distinction if not without controversy.

In the face of today's urgent, high priority job of enlisting private enterprise to provide housing for low- and moderate-income families, and to rebuild and restore inner city slums and blighted areas, the only justification we have for looking backward is to regain the organizational drive, dedication, sense of urgency, and speed of action for which FHA was noted in those earlier times.

The job we are entrusted with today will require every ounce of energy, every pound of thrust, every spark of evangelism that we brought to those earlier accomplishments - and more besides. In today's urgent job we cannot afford to fail.

I suppose it has come to your attention that there are some who say FHA cannot do this new job. There are those who believe FHA is too wedded to the split level house for middle class residents of suburban subdivision to be interested in, or capable of, mounting a massive effort to help private enterprise house families of low- and moderate-income. (It is also believed that FHA has no interest in the inner city - that we, like most private lenders, redline large segments of the central city - where the housing needs are greatest and the problems most pressing. There are others who say that FHA has lost its drive, that it is too cautious and too bogged down in inflexible rules, immovable procedures and tortuous red tape to mobilize itself and private enterprise to do the job which must be done.) All of these things and more have been said, not merely by disappointed builders whose projects were rejected, but by people of deep sincerity - responsible people. There are people today who are urging that this job be taken away from FHA and be given to a new organization in the department or somewhere else.

I do not agree with these sentiments, and I will tell you why.

First, FHA personnel have the skills to do the job that must be done. We have the experience, and the organization, already in being. It would take time and be difficult to create a substitute of the same size and competence. All we need is the will.

Second, contrary to the myths which still abound, FHA has already gone some distance in the direction of turning its programs and its talents to the inner city and to providing housing for low- and moderate-income families. It is not generally recognized, but over 51 percent of FHA's business for existing homes under Section 203 was in the central city, and 20 percent in what could be described as blighted areas. Over 67 percent of our 221(d)(2) existing home business was in the inner city.

Also, FHA has shown that it can and will work with profit and nonprofit sponsors to produce 221(d)(3) BMIR housing. In a year and a half, FHA launched a brand new, and quite difficult rent supplement program. All available funds have been allocated and many more rent supplement proposals are in the pipeline awaiting more contract authority from the congress.

In recent years, FHA has done more pioneering in residential rehabilitation in blighted and slum areas than has ever before been attempted by anyone.

I do not think these are the actions of an organization without heart, without drive, and without interest in the housing problems of low and moderate income families.

Third, I have faith that FHA, as an organization, can make the additional changes in attitude and action needed to accelerate the job we have already begun.

To some extent, our problem is to make our public image catch up with our actions. The only way to counter bad and unfair publicity, is to let people and newspapers know the facts. This we indend to do, but it can only be done by your support and actions.

I want you to send in immediately any newspaper story that is critical of FHA, or distorts the facts. We want to know about these things immediately, not receive them routinely several weeks later.

Also, if a critical problem develops in your jurisdiction, I want to know about it immediately by telephone. Far too often we have learned about this kind of problem by reading about it in the newspaper when it is too late to counter the unfavorable impression it creates.

But the problem is not entirely that we are misunderstood. While we have done much more than we receive credit for, we are still not doing enough, and we are not doing it fast enough.

Here are the things that must be done. Here are FHA's goals for 1967 and the years ahead. Here are the things we should measu

our actions against. Here are the things against which we will be judged.

1) Everyone of our employees, from the director down to the receptionist and secretaries, must understand that our job is to serve the public. This we must do positively, cheerfully, and courteously, our job is not to make it hard and frustrating for people to deal with us, but to make it easy, pleasant and rewarding. I am not saying you should say yes to everybody. I AM saying that whatever you say should be said courteously and quickly.

2) We must do all that we can to be sure that everyone of our programs is administered in a way which assures there is truly nondiscrimination and that equal opportunity is a reality. This means that every allegation of discriminatory practices must be dealt with speedily and affirmatively. We cannot and we will not condone a practice or pattern of different treatment for persons seeking to take advantage of our program.

The housing counseling service, which now is in effect in 15 cities, and will continue to be expanded, affords an excellent tool for helping us make certain that all prospective buyers or renters are given equal treatment. But to take advantage of this resource, we must emphasize to those being counseled the importance of reporting back on the results of their visits. This I know will be the subject of detailed discussion during this conference.

In the sale or rental of our acquired properties it is critical that we maintain policies and practices which assure equal opportunity. And all brokers, sales agents, management firms as well as our own personnel cannot have the slightest doubt about our position and must follow it to the letter. There simply is no other way and it is your job to see that this policy is carried out in clear, unequivocal and positive terms. And the same holds true in assuring equal employment opportunity and your responsibility to see that this is affirmatively achieved.

3. We have got to recognize that stimulating a flow of mortgage funds into the inner city, yes even into the slums, for the transfer of houses, for rehabilitation, and for new construction, is an FHA mission of the highest priority. No longer can we afford to wait until an applicant comes in and bludgeons us into this kind of activity.

I want you to go looking for applications. I want you to take the leadership in seeing that FHA programs are used to accomplish these priority objectives. I want you to know that applications involving the inner city, rehabilitation, BMIR and rent supplements are the first things your staff should work on, not the last.

We have developed a new manual for processing multifamily rehabilitation projects which you'll hear more about later. This manual, which contains some far reaching policy and procedural shifts, is designed to make it possible for you to process and promote sound rehabilitation projects in your jurisdictions, both in and out of urban renewal areas.

You will also hear more discussion of my recent field letter eliminating the requirement for a finding of economic soundness in riot or riot-prone areas of the city. This has the effect of making our programs available everywhere in the city.

I am speaking now of priorities. I do not mean that we do not have a responsibility to continue to administer effectively all of the programs the Congress has given us. For we also have a responsibility for increasing the general supply of housing. This will support and reinforce our efforts to help those of low- and moderate income. Also, a good project for low- and moderate-income families located in the suburbs can be a significant achievement in broadening housing choices.

4. There is another important, yes indispensable, thing we must do. We must eliminate the negativism, and the tortuous slowness of our processing of multifamily applications. This is our real achilles heel -- and it has got to go. It is not easy to counter the charges against FHA when you are confronted as often as I am with case after case in which we took an inexcusably long time to reach a decision. I know there are frequently mitigating circumstances.

But these are never very convincing when you are trying to explain long delays.

Extensive massaging of these applications won't make you any righter when you finally have to make a decision. What it will do is make everybody mad, give them good grounds for criticising us, and incidentally, perhaps lose the market for which the project was initially intended. When I look at our loss record on many of our multifamily programs, I am even more baffled to understand why we take so much time. The record does not show that our long and profound agonizing over multifamily proposals has improved our judgment.

You will hear more about what has been done and what will be done to wipe the cobwebs off our multifamily processing, particularly for BMIR, rent supplement, and 220 projects. But procedures and processes are not the vital ingredient. The vital ingredient is a will and determination to get the job done quickly -- a true sense of urgency -- a willingness to establish deadlines and to meet them -- a continuous pressure from the director to bring things to a head or know why. It is, I think, basically an administrative and leadership problem.

We intend to do our part, to establish deadlines, to keep the pressure on to get decisions made quickly. For this, I am looking to the Assistant Commissioner for Operations, the Regional Administrators, and to the Regional Operations Commissioners.

But the final responsibility for leadership, in each individual office, rests with YOU, the directors and their chief underwriters, and the assistant regional administrators for FHA.

5. We must be willing to take the risks necessary to accomplish the urgent job of assisting and encouraging private enterprise to house low- and moderate-income families, and to revive the inner city. It is highly likely that there are more risks inherent in achieving this kind of urgent social purpose, than in the insurance of loans on suburban subdivision.

There has been an attitude on the part of some, that FHA's principal job is to avoid making mistakes, and to preserve the sanctity of its insurance reserves. And it is indeed important that holders of FHA-insured mortgages know their investments are safe. I am fully aware of those who are anxious to pounce upon every failure.

The Secretary and I take the view that risks are inherent in an insurance program (otherwise there would be no justification or need for insurance); that since the vast majority of the Congress as

well as the executive branch expect us to carry out the mission I have been discussing, then they must expect us willingly to take the risks inherent in such a mission.

This does not by any means require the elimination of prudence and common sense. So long as we have a public responsibility, we can never do that. It does mean that we should be prepared to take the risks that are justified and prudent in the light of the urgent social objectives to be achieved.

Since nobody has ever invested extensively in reviving and rebuilding the inner city and since there has been little private experience in providing housing for low- and moderate-income families, I do not believe anyone is prepared to say exactly how much risk is involved.

In the long run, if all our efforts are successful, the risks may be far less than some anticipate.

I want us to develop and support projects which give reasonable promise of success, which give reasonable promise of improving the housing conditions of low- and moderate-income families, and improving the inner city. 13

A project should be rejected if it does not appear to give reasonable promise of accomplishing these objectives. It should not be rejected simply because it involves poor people, or because it is in a portion of the city you have been accustomed to rejecting or red-lining for old-fashioned, arbitrary reasons. We have a public responsibility, we c[illegible]

If you apply this standard to each project you approve, I believe no one can fault you. If you apply this standard to each project you approve, you will be fully backed by me and have the full support of the Department.

Let me repeat and summarize, I am asking you and every employee of FHA to enter into a new crusade -- to see that our programs are used to the fullest extent possible to improve housing conditions for low- and moderate-income families and to revive the inner city.

This means making our home programs available for the purchase, sale and improvement of properties throughout the inner city. It means encouraging rehabilitation and new construction in the inner city. It means developing good BMIR and rent supplement project both in the inner city and in outlying areas, for we have to dispurse the poor and discriminated against to all parts of the city as well as improve their housing conditions in the inner city where most of them now live.

To be successful in this vital undertaking everyone should carry away from here (and transmit to everyone working under you) a new commitment to this objective, a sense of urgency which recognizes the importance of the job before us, and a determination to take the steps, reach decisions, and make the sacrifices necessary. I want you to put the highest possible priority on promoting the use of our various prograr which can contribute to this objective. I have the full support of

I want you in the multifamily area, to slash through red tape, indecision, and pussyfooting, to set rigid time goals and see that they are met - in exactly the same way that, in the past few years, we have performed a miraculous speed-up in the processing of home mortgage applications, I want you to be prudent as well as urgent, but I want you to be prepared to take the risks necessary to accomplish the job and to know that you will be fully supported in the decisions you make.

The job I am asking you to undertake is one of the most urgent the nation faces. The President knows it, the Secretary knows it, most members of the congress know it, private businessmen know it. In the months ahead, all these eyes will be watching us.

I believe we are capable of doing the job, or I wouldn't be saying these things to you. But let us keep one thing in mind.

Just as sure as you are sitting here today, if FHA fails to respond effectively and affirmatively to this challenge, if FHA fails to produce the results needed, then no longer will FHA be looked at as our nation's housing agency and the need and justification for its continuation may very well be the central theme. Undoubtedly alternative organizations will be developed because the need is too great and too critical to leave a void.

I have given a number of reasons why I believe FHA must mount a major effort to accelerate and expand use of those of our programs which can serve families of low- and moderate-income and revive and rebuild the inner city. Let me give you one more reason. You should work at this task as though your job depended on it -- because it may!

# # # #

C 1179

EXECUTIVE ORDER NO. 11063

Nov. 20, 1962, 27 F. R. 11527

Equal Opportunity in Housing

WHEREAS the granting of Federal assistance for the provision, rehabilitation, or operation of housing and related facilities from which Americans are excluded because of their race, color, creed or national origin is unfair, unjust, and inconsistent with the public policy of the United States as manifested in its Constitution and laws; and

WHEREAS the Congress in the Housing Act of 1949 [See chapters 8 and 8A of this title and chapter 13 of Title 12, Banks and Banking] has declared that the general welfare and security of the nation and the health and living standanrds of its people require the realization as soon as possible of the goal of a decent home and a suitable living environment for every American family; and

WHEREAS discriminatcry policies and practices based upon race, color, creed, or national origin now operate to deny many Americans the benefits of housing finance through Federal assistance and as a consequence prevent such assistance from providing them with an alternative to substandard, unsafe, unsanitary, and overcrowded housing; and

WHEREAS such discriminatory policies and practices result in segregated patterns of housing and necessarily produce other forms of discrimination and segregation which deprive many Americans of equal opportunity in the exercise of their unalienable rights to life, liberty, and the pursuit of happiness; and

WHEREAS the executive branch of the Government, in faithfully executing the laws of the United States which authorize Federal financial assistance, directly or indirectly, for the provision, rehabilitation, and operation of housing and related facilities is charged with an obligation and duty to assure that those laws are fairly administered and that benefits thereunder are made available to all Americans without regard to their race, color, creed or national origin;

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:

PART I - PREVENTION OF DISCRIMINATION

Section 101. I hereby direct all departments and agencies in the executive branch of the Federal Government, insofar as their functions relate to the provision, rehabilitation, or operation of housing and related facilities, to take all action necessary and appropriate to prevent discrimination because of race, color, creed or national origin -

(a) in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are -

(i) owned or operated by the Federal Government, or

(ii) provided in whole or in part with the aid of loans, advances, grants, or contributions hereafter agreed to be made by the Federal Government, or

(iii) provided in whole or in part by loans hereafter insured, guaranteed, or otherwise secured by the Federal Government, or

(iv) provided by the development or the redevelopment of real property purchased, leased, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under a loan or grant contract hereafter entered into; and

(b) in the lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans hereafter insured or guaranteed by the Federal Government.

Section 102. I hereby direct the Housing and Home Finance Agency [now the Secretary

of Housing and Urban Development] and all other executive departments and agencies to use their good offices and to take other appropriate action permitted by law, including the institution of appropriate litigation, if required, to promote the abandonment of discriminatory practices with respect to residential property and related facilities heretofore provided with Federal financial assistance of the types referred to in sections 101 (a) (ii), (iii), and (iv).

PART II - IMPLEMENTATION BY DEPARTMENTS AND AGENCIES

Section 201. Each executive department and agency subject to this order is directed to submit to the President's Committee on Equal Opportunity in Housing established pursuant to part iv of this order (hereinafter sometimes referred to as the Committee), within thirty days from the date of this order, a report outlining all current programs administered by it which are affected by this order.

Section 202. Each such department and agency shall be primarily responsible for obtaining compliance with the purposes of this order as the order applies to programs administered by it; and is directed to cooperate with the Committee, to furnish it, in accordance with law, such information and assistance as it may request in the performance of its functions, and to report to it at such intervals as the Committee may require.

Section 203. Each such department and agency shall within thirty days from the date of this order, issue such rules and regulations, adopt such procedures and policies, and make such exemptions and exceptions as may be consistent with law and necessary or appropriate to effectuate the purposes of this order. Each such department and agency shall consult with the Committee in order to achieve such consistency and uniformity as may be feasible.

PART III - ENFORCEMENT

Section 301. The Committee, any subcommittee thereof, and any officer or employee designated by any executive department or agency subject to this order may hold such hearings, public or private, as the Committee, department, or agency may deem advisable for compliance, enforcement or educational

purposes.

Section 302. If any executive department or agency subject to this order concludes that any person or firm (including but not limited to any individual, partnership, association, trust or corporation) or any State or local public agency has violated any rule, regulation, or procedure issued or adopted pursuant to this order, or any non-discrimination included in any agreement or contract pursuant to any such rule, regulation or procedure, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation, and persuation, unless similar efforts made by another Federal department or agency have been unsuccessful. In conformity with rules, regulations, procedures, or policies issued or adopted by it pursuant to section 203 hereof, a department or agency may take such action as may be appropriate under its governing laws, including, but not limited to, the following:

It may -

(a) cancel or terminate in whole or in part any agreement or contract with such person, firm, or State or local public agency providing for a loan, grant, contribution, or other Federal aid, or for the payment of a commission or fee;

(b) refrain from extending any further aid under any program administered by it and affected by this order until it is satisfied that the affected person, firm, or State or local public agency will comply with the rules, regulations or procedures issued or adopted pursuant to this order, and any non-discrimination provisions included in any agreement or contract;

(c) refuse to approve a lending institution or any other lender as a beneficiary under any program administered by it which is affected by this order or revoke such approval if previously given.

Section 303. In appropriate cases executive departments and agencies shall refer to the Attorney General violations of any rules, regulations, or procedures issued or adopted pursuant to this order, or violations of any non-discrimination provisions included in any agreement or contract, for such civil or criminal action as he may deem appropriate. The Attorney General is authorized to furnish legal advice concerning this order to the Committee and to any department or agency requesting such advice.

Section 304. Any executive department or agency affected by this order may also invoke the sanctions provided in section 302 where any person or firm, including a lender, has violated the rules, regulations, or procedures issued or adopted pursuant to this order, or the non-discrimination included in any agreement or contract, with respect to any program affected by this order administered by any other executive department or agency.

[PART IV - ESTABLISHMENT OF THE PRESIDENT'S COMMITTEE ON EQUAL OPPORTUNITY IN HOUSING]

* * *

[PART V - POWERS AND DUTIES OF THE PRESIDENT'S COMMITTEE ON EQUAL OPPORTUNITY IN HOUSING]

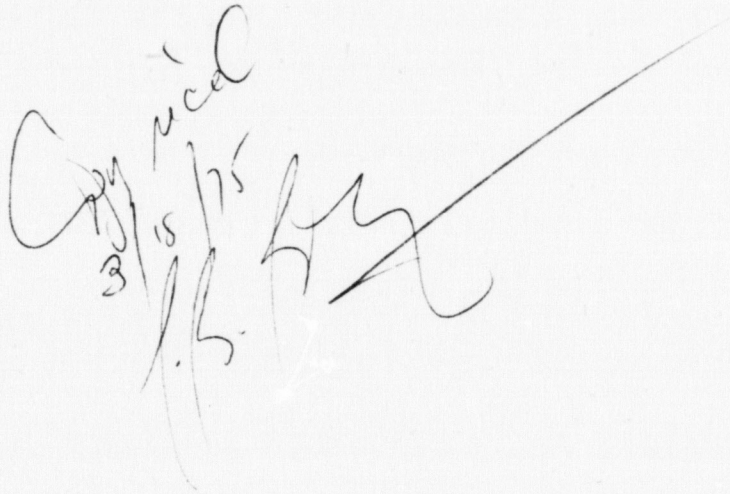
* * *

PART VI - MISCELLANEOUS

Section 601. As used in this order, the term "departments and agencies" includes any wholly-owned or mixed ownership Government corporation, and the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories of the United States.

Section 602. This order shall become effective immediately.

John Fitzgerald Kennedy



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